

A.S.N. 227/2.

L A W S
OF THE
STATE OF NEW-YORK,
COMPRISING THE
CONSTITUTION,
AND THE
ACTS OF THE LEGISLATURE,
SINCE THE REVOLUTION, FROM THE
FIRST TO THE TWENTIETH SESSION, INCLUSIVE.



IN THREE VOLUMES.

VOLUME I.

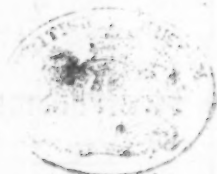
SECOND EDITION.

Quum Leges alia super alias accumulatae, eas de integro retractare, et in Corpus sanum et habile
redigere. ex Utro sic.

Mifera Servitus est ubi Just est vagum aut incognitum.

BACON.
4 Inst. 246.

NEW-YORK—PRINTED BY THOMAS GREENLEAF—M, DCC, XCVIII.



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PREFACE.

When I issued Proposals for the first Octavo Edition of the revised Laws of this State, I was far from being confident of Success; but, confiding in the Judgment of others (that it would be generally adopted) put it to the Press, at the expence of several thousand Dollars, before all the subscription Lists were called in.—In the Issue I have realized the Anticipations of my Friends: that Edition came into general Use, and is now expended.

Some Discouragements to the Expence of a second Edition also have been held to View; but these being opposed by the Opinions of Gentlemen learned in the Law, that this Edition will be preferred to a further Revision, because it will contain Laws (some of which will be referred to these many Years) which will be expunged in the Revision, should any take Place, has induced me to risque this last Expence.

This Edition is printed Page for Page with the first, and is a true and correct Copy—Calculated thus for the Convenience of Counsellors, and others, who may have made useful Notes upon, or References to certain Pages in the first Edition; these will exactly correspond here, and render their Notes and References perpetual.

Fully confident in the Continuation of public Patronage in this second Attempt of so expensive an Undertaking, I am respectfully,

Their obedient Servant,

THOMAS GREENLEAF.

New-York, February, 1798.

THE
CONSTITUTION
OF THE
STATE OF NEW-YORK.

IN CONVENTION OF THE REPRESENTATIVES
OF THE STATE OF NEW-YORK.

KINGSTON, 20th April, 1777.

Preamble.

Reasons of establishing
a temporary go-
vernment.

WHEREAS the many tyrannical and oppressive usurpations of the king and parliament of Great-Britain, on the rights and liberties of the people of the American colonies, had reduced them to the necessity of introducing a government by congresses and committees, as temporary expedients, and to exist no longer than the grievances of the people should remain without redress.

AND WHEREAS the congress of the colony of New-York, did, on the thirty-first day of May, now last past, resolve as follows, viz.

“ **WHEREAS** the present government of this colony, by congress and committees, was instituted while the former government under the crown of Great-Britain, existed in full force; and was established for the sole purpose of opposing the usurpation of the British parliament, and was intended to expire on a reconciliation with Great-Britain, which was then apprehended would soon take place, but is now considered as remote and uncertain.

Inconveniences of it.

“ **AND WHEREAS** many and great inconveniences attend the said mode of government by congress and committees, as of necessity, in many instances, legislative, judicial, and executive powers have been vested therein, especially since the dissolution of the former government, by the abdication of the late governor, and the exclusion of this colony from the protection of the king of Great-Britain.

“ **AND WHEREAS** the continental congress did resolve as followeth, to wit:

Resolution of the
continental congress.

‘ WHEREAS his Britannic majesty, in conjunction with the lords and commons of Great-Britain, has, by a late act of parliament, excluded the inhabitants of these united colonies from the protection of his crown.—And whereas no answers whatever, to the humble petition of the colonies for redress of grievances and reconciliation with Great-Britain, has been, or is likely to be given, but the whole force of that kingdom, aided by foreign mercenaries, is to be exerted for the destruction of the good people of these colonies.—And whereas it appears absolutely irreconcilable to reason and good conscience, for the people of these colonies, now to take the oaths and affirmations necessary for the support of any government under the crown of Great-Britain; and it is necessary that the exercise of every kind of authority under the said crown, should be totally suppressed, and all the powers of government exerted under the authority of the people of the colonies, for the preservation of internal peace, virtue and good order, as well as for the defence of our lives, liberties, and properties, against the hostile invasions and cruel depredations of our enemies: Therefore,

‘ RESOLVED, That it be recommended to the respective assemblies and conventions of the united colonies, where no government sufficient to the exigences of their affairs has been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general.’

‘ AND WHEREAS doubts have arisen, whether this congress are invested with sufficient power and authority to deliberate and determine on so important a subject as the necessity of erecting and constituting a new form of government and internal police, to the exclusion of all foreign jurisdiction, dominion and controul whatever.—And whereas it appertains of right solely to the people of this colony to determine said doubts: Therefore,

‘ RESOLVED, That it be recommended to the electors in the several counties in this colony, by election in the manner and form prescribed for the election of the present congress, either to authorise (in addition to the powers vested in this congress) their present deputies, or others in the stead of their present deputies, or either of them, to take into consideration the necessity and propriety of instituting such new government as in and by the said resolution of the continental congress is described and recommended: And if the majority of the counties, by their deputies in provincial congress, shall be of opinion that such new government ought to be instituted and established, then to institute and establish such a government as they shall deem best calculated to secure the rights, liberties, and happiness of the good people of this colony: and to continue in force until a future peace with Great-Britain shall render the same unnecessary. And,

‘ RESOLVED, That the said elections in the several counties, ought to be had on such day, and at such place or places, as by the committee of each county respectively shall be determined.—And it is recommended to the said committees, to fix such early days for the said elections, as that all the deputies to be elected have sufficient time to repair to the city of New-York by the second Monday in July next; on which day all the said deputies ought punctually to give their attendance.

Recommending the
establishment of go.
vernments.

Provincial congress
not invested with
power to institute a
new form of govern-
ment.

Recommendation to
the electors to autho-
rise their deputies or
others to form a new
government.

Time and place for
meeting of the depu-
ties.

"AND WHEREAS the object of the foregoing resolutions is of the utmost importance to the good people of this colony;

"RESOLVED, That it be, and it is hereby earnestly recommended to the committees, freeholders, and other electors in the different counties in this colony, diligently to carry the same into execution."

AND WHEREAS the good people of the said colony, in pursuance of the said resolution, and reposing special trust and confidence in the members of this convention, have appointed, authorised, and empowered them for the purposes, and in the manner, and with the powers in and by the said resolve specified, declared and mentioned.

The convention empowered for the purposes aforesaid.

AND WHEREAS the delegates to the united American states, in general congress convened, did on the fourth day of July now last past, solemnly publish and declare, in the words following, viz.

Declaration of Independence.

"WHEN in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

Reasons for instituting and altering governments.

"We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are, life, liberty, and the pursuit of happiness.—That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence indeed will dictate that governments long established should not be changed for light and transient causes, and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former system of government. The history of the present king of Great-Britain is a history of repeated injuries and usurpations, all having in direct object, the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

Tyrannic proceedings of the king of Great Britain.

"He has refused his assent to laws, the most wholesome and necessary for the public good.

"He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

"He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature; a right inestimable to them, and formidable to tyrants only.

" He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

" He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

" He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise; the state remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

" He has endeavoured to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

" He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

" He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

" He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

" He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

" He has affected to render the military independent of, and superior to, the civil power.

" He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation,

" For quartering large bodies of troops among us:

" For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

" For cutting off our trade with all parts of the world:

" For imposing taxes on us without our consent:

" For depriving us in many cases, of the benefits of trial by jury:

" For transporting us beyond seas to be tried for pretended offences:

" For abolishing the free system of English laws in a neighbouring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

" For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments:

" For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

" He has abdicated government here, by declaring us out of his protection, and waging war against us.

" He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

" He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

" He has constrained our fellow citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

"He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguishing destruction of all ages, sexes and conditions.

"In every stage of these oppressions, we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

"Nor have we been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connection and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must therefore acquiesce in the necessity which denounces our separation, and hold them as we hold the rest of mankind, enemies in war; in peace, friends.

"We, therefore, the Representatives of the United States of America, in general congress assembled, appealing to the supreme judge of the world for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare, That these

The united colonies declared free and independent states.

united colonies are, and of right ought to be **FREE AND INDEPENDENT STATES**; that they are absolved from all

allegiance to the British crown and that all political connection between them and the state of Great-Britain, is, and ought to be totally dissolved, and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honour."

Declaration of independence approved by the convention of the state of New-York

AND WHEREAS this convention having taken this declaration into their most serious consideration, did on the ninth day of July last past, unanimously resolve, That the reasons assigned by the continental congress, for declaring the united colonies free and independent states, are cogent and conclusive: And that while we lament the cruel necessity which has rendered that measure unavoidable, we approve the same, and will, at the risque of our lives and fortunes, join with the other colonies in supporting it.

By virtue of which several acts, declarations and proceedings, mentioned and contained in the afore-recited resolves or resolutions of the general congress of the united American states, and of the congresses or conventions of this state, all power whatever therein hath reverted to the people thereof, and this convention hath by their suffrages and free choice been appointed, and among other things authorized to institute and establish such a government as they shall deem best calculated to secure the rights and liberties of the good people of this state, most conducive of the happiness and safety of their constituents in particular, and of America in general:

The convention authorized to establish a government.

By virtue of which several acts, declarations and proceedings, mentioned and contained in the afore-recited resolves or resolutions of the general congress of the united American states, and of the congresses or conventions of this state, all power whatever therein hath reverted to the people thereof, and this convention hath by their suffrages and free choice been appointed, and among other things authorized to institute and establish such a government as they shall deem best calculated to secure the rights and liberties of the good people of this state, most conducive of the happiness and safety of their constituents in particular, and of America in general:

No authority to be exercised over the people, but such as shall be derived from them.

I. This convention, therefore, in the name and by the authority of the good people of this state, DOTH ORDAIN DETERMINE AND DECLARE, That no authority shall on any pretence whatever, be exercised over the people, or members of this state, but such as shall be derived from and granted by them.

II. This convention doth further, in the name and by the authority of the good people of this state ORDAIN, DETERMINE AND DECLARE, That the supreme legislative power within this state, shall be vested in two separate

Legislative power vested in an assembly and senate.

and distinct bodies of men; the one to be called, the Assembly of the state of New-York; the other to be called, the Senate of the state of New-York: who together shall form the Legislature, and meet once at least in every year for the dispatch of business.

III. AND WHEREAS laws inconsistent with the spirit of this constitution, or with the public good, may be hastily and unadvisedly passed: Be it ordained, That the governor for the time being, the chancellor and the judges of the supreme court, or any two of them, together with the governor,

Council of revision.

shall be, and hereby are, constituted a council to revise all bills about to be passed into laws by the legislature. And for that purpose shall assemble themselves, from time to time, when the legislature shall be convened; for which, nevertheless, they shall not receive any salary or consideration under any pretence whatever. And that all bills which have passed the senate and assembly shall, before they become laws, be presented to the said council for their revision and consideration; and

Their duty.

if upon such revision and consideration, it should appear improper to the said council, or a majority of them, that the said bill should become a law of this state, that they return the same, together with their objections thereto in writing, to the senate, or house of assembly, in whichsoever the same shall have originated, who shall enter the objections sent down by the council, at large, in their minutes, and proceed to reconsider the said bill. But if after such re-consideration, two thirds of the said senate, or house of assembly, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be re-considered, and if approved by two thirds of the members present, shall be a law.

And in order to prevent any unnecessary delays,

Bills to become laws if not returned in ten days.

BE IT FURTHER ORDAINED, that if any bill shall not be returned by the council, within ten days after it shall have been presented, the same shall be a law, unless the legislature shall, by their adjournment, render a return of the said bill within ten days impracticable; in which case the bill shall be returned on the first day of the meeting of the legislature, after the expiration of the said ten days.

The assembly to consist of 70 members, annually chosen.

IV. That the assembly shall consist of at least seventy members, to be annually chosen in the several counties, in the proportions following, viz.

For the city and county of New-York,	Nine.
The city and county of * Albany,	Ten.
The county of Dutchess,	Seven.
The county of Westchester,	Six.
The county of Ulster,	Six.
The county of Suffolk,	Five.
The county of Queens,	Four.

New apportionment made 14th S. S. Ch. 4.

* Divided into several counties, 9th Sess. Ch. 23, and 14th Sess. Ch. 4.

The county of Orange,	Four.
The county of Kings,	Two.
The county of Richmond,	Two.
The county of † Tryon,	Six.
The county of ‡ Charlotte,	Four.
The county of § Cumberland,	Three.
The county of § Gloucester,	Two.

Census to be taken.

V. That as soon after the expiration of seven years, subsequent to the termination of the present war, as may be, a census of the electors and inhabitants in this state be taken, under the direction of the legislature. And if on such census it shall appear, that the number of representatives in the Assembly from the said counties, is not justly proportioned to the number of electors in the said counties respectively; that the legislature do adjust and apportion the same by that rule. And further, that once in every seven years, after the taking of the said first census, a just account of the electors resident in each county shall be taken; and if it shall thereupon appear, that the number of electors in any county, shall have increased or diminished one or more seventieth parts of the whole number of electors, which on the said first census shall be found in this state, the number of representatives for such county shall be increased or diminished accordingly, that is to say, one representative for every seventieth part as aforesaid.

If the number of representatives is not justly proportioned, the legislature to adjust it.

An account to be taken once in every seven years.

Voting by ballot.

VI. AND WHEREAS an opinion hath long prevailed among divers of the good people of this state, that voting at elections by ballot, would tend more to preserve the liberty and equal freedom of the people, than voting viva voce: To the end therefore, that a fair experiment be made, which of those two methods of voting is to be preferred:

BE IT ORDAINED, That as soon as may be, after the termination of the present war, between the United States of America and Great Britain, an act

or acts be passed by the legislature of this state, for causing all elections thereafter to be held in this state for senators and representatives in assembly, to be by ballot, and directing the manner in which the same shall be conducted. AND WHEREAS it is possible, that after all the care of the legislature, in framing the said act or acts, certain inconveniences and mischiefs, unforeseen at this day, may be found to attend the said mode of electing by ballot:

IT IS FURTHER ORDAINED, That if after a full and fair experiment shall be made of voting by ballot aforesaid, the same shall be found less conducive to the safety or interest of the state, than the method of voting viva voce, it shall be lawful and constitutional for the legislature to abolish the same; Provided two thirds of the members present in each house respectively shall concur therein. And further, that during the continuance of the present war, and until the legislature of this state shall provide for the election of senators, and representatives in assembly by ballot, the said elections shall be made viva voce.

VII. That every male inhabitant of full age, who shall have personally resided within one of the counties of this state, for six months immediately

† Name altered, 7th Sess. Ch. 17, and divided into several counties, 12th Sess. Ch. 11, and 14th Sess. Ch. 10.

‡ Name altered, 7th Sess. Ch. 17, and part of it erected into a new county, by the name of Clifton, 11th Sess. Ch. 51, Sec. 2.

§ New part of the state of Vermont.

preceding the day of election, shall at such election, be entitled to vote for representatives of the said county in assembly; if during the time aforesaid, he

Qualifications for electors. shall have been a freeholder, possessing a freehold of the value of twenty pounds, within the said county, or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes to this state: Provided always, That every person who now is a freeman of the city of Albany, or who was made a freeman of the city of New-York, on or before the fourteenth day of October, in the year of our Lord one thousand seven hundred and seventy-five, and shall be actually and usually resident in the said cities respectively, shall be entitled to vote for representatives in assembly within his said place of residence.

Electors to take an oath of allegiance. VIII. That every elector, before he is admitted to vote, shall, if required by the returning officer or either of the inspectors, to take an oath, or if of the people called quakers, an affirmation, of allegiance to the state.

Privilege of members of the assembly. IX. That the assembly thus constituted, shall chuse their own speaker, be judges of their own members, and enjoy the same privileges, and proceed in doing business, in like manner as the assemblies of the colony of New-York of right formerly did; and that a majority of the said members shall, from time to time, constitute a house to proceed upon business.

X. And this convention doth further, in the name, and by the authority of the good people of this state, ORDAIN, DETERMINE AND DE-

Twenty-four senators to be chosen by freeholders, of 100l. freehold. CLARE, That the senate of the state of New-York, shall consist of twenty-four freeholders, to be chosen out of the body of the freeholders, and that they be chosen by the freeholders of this state, possessed of freeholds of the value of one hundred pounds, over and above all debts charged thereon.

Senators to be elected for four years. XI. That the members of the senate be elected for four years, and immediately after the first election, they be divided by lot into four classes, six in each class, and numbered, one, two, three, and four; that the seats of the members of the first class shall be vacated at the expiration of the first year, the second class the second year, and so on continually, to the end that the fourth part of the senate, as nearly as possible, may be annually chosen.

To be divided into four classes. XII. That the election of senators shall be after this manner; that so much of this state as is now parcelled into counties, be divided into four great districts; the Southern district to comprehend the city and county of New-York, Suffolk, Westchester, King's, Queen's, and Richmond counties; the Middle district to comprehend the counties of Dutchess, Ulster, and Orange; the Western district the city and county of Albany, and Tryon county; and the Eastern district, the counties of Charlotte, Cumberland and Gloucester. That the senators shall be elected by the freeholders of the said districts, qualified as aforesaid, in the proportions following, to wit; In the Southern district, nine; in the Middle district, six; in the Western district, six; and in the Eastern district, three. AND BE IT ORDAINED,

Manner of chusing senators. That a census shall be taken as soon as may be, after the expiration of seven years from the termination of the present war, under the direction of the legislature: And if on

Altered 14th sect. chap. 4. And if it shall appear that the number of senators is not just.

ly proportioned, the legislature shall adjust it.

such census it shall appear, that the number of senators is not justly proportioned to the several districts, that the legislature adjust the proportion as near as may be, to the number of freeholders qualified as aforesaid, in each district. That when the number of electors within any of the said districts, shall have increased one twenty-fourth part of the whole number of electors, which by the said census shall be found to be in this state, an additional senator shall be chosen by the electors of such district.

An additional senator.

That a majority of the number of senators to be chosen as aforesaid, shall be necessary to constitute a senate, sufficient to proceed upon business, and that the senate shall, in like manner with the assembly, be the judges of its own members.

The Senate to be judges of its members.

The legislature may divide the state into other counties and districts.

AND BE IT ORDAINED, That it shall be in the power of the future legislatures of this state, for the convenience and advantage of the good people thereof, to divide the same into such further and other counties and districts, as shall to them appear necessary.

XIII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That no member of this state shall be disfranchised or deprived of any of the rights or privileges secured to the subjects of this state, by this constitution, unless by the law of the land, or the judgement of his peers.

No member of the state to be disfranchised but by law.

Neither house to adjourn longer than two days, without mutual consent.

XIV. That neither the assembly or the senate shall have power to adjourn themselves for any longer time than two days, without the mutual consent of both.

XV. That whenever the assembly and senate disagree, a conference shall be held in the presence of both, and be managed by committees to be by them respectively chosen by ballot. That the doors both of the senate and assembly, shall at all times be kept open to all persons except when the welfare of the state shall require their debates to be kept secret.

Doors of the senate and assembly to be open.

And the journals of all their proceedings shall be kept in the manner heretofore accustomed by the general assembly of the colony of New-York, and, except such parts as they shall as aforesaid respectively determine not to make public, be from day to day (if the business of the legislature will permit) published.

Number of the senate and assembly limited.

XVI. It is nevertheless provided, that the number of senators shall never exceed one hundred, nor the number of the assembly three hundred; but that whenever the number of senators shall amount to one hundred, or of the assembly to three hundred, then and in such case the legislature shall from time to time hereafter, by laws for that purpose, apportion and distribute the said one hundred senators, and three hundred representatives, among the great districts and counties of this state, in proportion to the number of their respective electors, so that the representation of the good people of this state, both in the senate and assembly, shall for ever remain proportionate and adequate.

XVII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, that the supreme executive power, and authority of this state, shall be vested in a governor; and that

Executive power vested in a governor.

steadily once in every three years, and as often as the seat of government shall become vacant, a wise and discreet freeholder of this

To be chosen once in three years by ballot. state shall be by ballot elected governor, by the freeholders of this state, qualified as before described to elect senators; which elections shall be always held at the times and places of choosing representatives in assembly for each respective county; and that the person who hath the greatest number of votes within the said state shall be the governor thereof.

Power of the governor. XVIII. That the governor shall continue in office three years, and shall, by virtue of his office, be general and commander in chief of all the militia, and admiral of the navy of this state; that he shall have power to convene the assembly and senate on extraordinary occasions, to prorogue them from time to time, provided such prorogations shall not exceed sixty days in the space of any one year; and at his discretion to grant reprieves and pardon to persons convicted of crimes, other than treason or murder, in which he may suspend the execution of the sentence, until it shall be reported to the legislature at their subsequent meeting; and they shall either pardon or direct the execution of the criminal, or grant a further reprieve.

His duty. XIX. That it shall be the duty of the governor to inform the legislature at every sessions, of the condition of the state, so far as may respect his department; to recommend such matters to their consideration as shall appear to him to concern its good government, welfare and prosperity; to correspond with the continental congress, and other states; to transact all necessary business with the officers of government, civil and military; to take care that the laws are faithfully executed to the best of his ability; and to expedite all such measures as may be resolved upon by the legislature:

Lieutenant-governor. XX. That a lieutenant-governor shall, at every election of a governor, and as often as the lieutenant-governor shall die, resign, or be removed from office, be elected in the same manner with the governor, to continue in office until the next election of a governor; and such lieutenant governor shall, by virtue of his office, be president of the senate and, upon an equal division, have a casting voice in their decisions, but not vote on any other occasion.

To be president of the senate. And in case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the lieutenant-governor shall exercise all the power and authority appertaining to the office of governor, until another be chosen, or the governor absent or impeached, shall return, or be acquitted: Provided, That where the governor shall, with the consent of the legislature, be out of the state, in time of war, at the head of a military force thereof, he shall still continue in his command of all the military force of this state, both by sea and land.

His further power and duty. XXI. That whenever the government shall be administered by the lieutenant-governor, or he shall be unable to attend as president of the senate, the senators shall have power to elect one of their own members to the office of president of the senate, which he shall exercise pro hac vice; And if, during such vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or be absent from the state, the president of the senate shall, in like manner as the lieutenant-governor, administer the government, until others shall be elected by the suffrage of the people at the succeeding election.

Treasurer to be appointed by act of the legislature.

XXII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, that the treasurer of this state shall be appointed by act of the legislature, to originate with the assembly: Provided, That he shall not be elected out of either branch of the legislature.

Council of appointment.
 XXIII. That all officers, other than those who by this constitution are directed to be otherwise appointed, shall be appointed in the manner following, to wit; The assembly shall, once in every year, openly nominate and appoint one of the senators from each great district, which senators shall form a council for the appointment of the said officers, of which the governor for the time being, or the lieutenant governor, or the president of the senate, when they shall respectively administer the government, shall be president, and have a casting voice, but no other vote; and with the advice and consent of the said council shall appoint all the said officers; and that a majority of the said council be a quorum; And further, the said senators shall not be eligible to the said council for two years successively.

Tenure of certain offices.

XXIV. That all military officers be appointed during pleasure; that all commissioned officers, civil and military, be commissioned by the governor, and that the chancellor, the judges of the supreme court and first judge of the county court in every county, hold their offices during good behaviour, or until they shall have respectively attained the age of sixty years.

The chancellor and judges of the supreme court to hold no other office, except of delegate upon special occasions.

First judges of county courts to hold no other office, except of senator or delegate.

XXV. That the chancellor and judges of the supreme court shall not at the same time hold any other office, excepting that of delegate to the general congress, upon special occasions; and that the first judges of the county courts in the several counties, shall not at the same time hold any other office excepting that of senator, or delegate to the general congress; But if the chancellor, or either of the said judges be elected or appointed to any other office, excepting as is before excepted, it shall be at his option in which to serve.

Sheriffs and coroners to be annually appointed. Sheriff to hold no other office.
 XXVI. That sheriffs and coroners be annually appointed; and that no person shall be capable of holding either of the said offices more than four years successively, nor the sheriff of holding any other office at the same time.

XXVII. AND BE IT FURTHER ORDAINED, That the register and clerks in chancery be appointed by the chancellor; the clerks of the supreme court by the judges of the said court; the clerk of the court of probates, by the judge of the said court; and the register and marshall of the court of admiralty, by the judge of the admiralty. The said marshall, registers and clerks to continue in office during the pleasure of those by whom they are to be appointed, as aforesaid.

And all attorneys, solicitors and counsellors at law, hereafter to be appointed, be appointed by the court, and licensed by the first judge of the court in which they shall respectively plead or practice; and be regulated by the rules and orders of the said courts.

XXVIII. AND BE IT FURTHER ORDAINED, That where by this constitution the duration of any office shall not be ascertained, such office shall be construed to be held during the pleasure of the council of appointment: Provided, that new commissions shall be issued to judges of the

county courts (other than to the first judge) and to justices of the peace, once at the least in every three years.

Town officers to be elected by the people.

XXIX. That town clerks, supervisors, assessors, constables and collectors, and all other officers heretofore eligible by the people, shall always continue to be so eligible, in the manner directed by the present or future acts of legislature.

Manner of appointing loan officers, county treasurers, and supervisors' clerks.

That loan officers, county treasurers, and clerks of the supervisors, continue to be appointed in the manner directed by the present or future acts of the legislature.

XXX. That delegates to represent this state, in the general congress of the United States of America, be annually appointed as follows, to wit: The senate and assembly shall each openly nominate as many persons as shall be equal to the whole number of delegates to be appointed; after which nomination, they shall meet together, and those persons named in both lists shall be delegates; and out of those persons whose names are not on both lists, one half shall be chosen by the joint ballot of the senators and members of assembly, so met together as aforesaid.

Style of laws. XXXI. That the stile of all laws shall be as follows, to wit: Be it enacted by the people of the state of New-York, represented in senate and assembly. And that all writs and other proceedings shall run in the name of, The people of the state of New-York, and be tested in the name of the chancellor or chief judge of the court from whence they shall issue.

Form of writs. XXXII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That a court shall be instituted for the trial of impeachments, and the correction of errors, under the regulations which shall be established by the legislature; and to consist of the president of the senate for the time being, and the senators, chancellor, and judges of the supreme court, or the major part of them; except that when an impeachment shall be prosecuted against the chancellor, or either of the judges of the supreme court, the person so impeached shall be suspended from exercising his office, until his acquittal: And in like manner, when an appeal from a decree in equity shall be heard, the chancellor shall inform the court of the reasons of his decree, but shall not have a voice in the final sentence. And if the cause to be determined shall be brought up by writ of error on a question of law, on a judgment in the supreme court, the judges of the court shall assign the reasons of such their judgment, but shall not have a voice for its affirmance or reversal.

Court for trial of impeachments, and correction of errors.

Power of impeachment vested in the assembly. XXXIII. That the power of impeaching all officers of the state, for mal and corrupt conduct in their respective offices, be vested in the representatives of the people in assembly; but that it shall always be necessary that two-third parts of the members present shall consent to and agree in such impeachment. That previous to the trial of every impeachment, the members of the said court shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence; and that no judgment of the said court shall be valid, unless it shall be assented to by two-third parts of the members then present; nor shall it extend further than to removal from office, and disqualification to hold or enjoy any place of honour, trust, or profit, under this state. But the party so convicted, shall be, nevertheless, liable and subject to indictment, trial, judgment and punishment, according to the laws of the land.

persons impeached
or indicted allowed
counsel.

XXXIV. AND IT IS FURTHER ORDAINED, That in every trial on impeachment or indictment for crimes or misdemeanors, the party impeached or indicted, shall be allowed counsel, as in civil actions.

XXXV. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That such parts of the common law of England, and of the statute law of England and Great-Britain, and of the acts of the legislature of the colony of New-York, as together did form the law of the said colony on the nineteenth day of April, in the year of our Lord, one thousand seven hundred and seventy-five, shall be and continue the law of this state; subject to such alterations and provisions as the legislature of this state shall, from time to time, make concerning the same. That such of the said acts as are temporary, shall expire at the times limited for their duration respectively. That all such parts of the said common law, and all such of the said statutes, and acts aforesaid, or parts thereof, as may be construed to establish or maintain any particular denomination of christians, or their ministers, or concern the allegiance heretofore yielded to, and the supremacy, sovereignty, government or prerogatives, claimed or exercised by the king of Great-Britain and his predecessors, over the colony of New-York and its inhabitants, or are repugnant to this constitution, be, and they hereby are abrogated and rejected. And this convention doth further ordain, that the resolves or resolutions of the congresses of the colony of New-York, and of the convention of the state of New-York, now in force, and not repugnant to the government established by this constitution, shall be considered as making part of the laws of this state; subject, nevertheless, to such alterations and provisions, as the legislature of this state may from time to time make, concerning the same.

XXXVI. AND BE IT FURTHER ORDAINED, That all grants of land within this state, made by the king of Great-Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void: But that nothing in this constitution contained shall be construed to affect any grants of land within this state, made by the authority of the said king or his predecessors, or to annul any charters to bodies politic, by him or them, or any of them, made prior to that day. And that none of the said charters shall be adjudged to be void by reason of any non-user or mis-user of any of their respective rights or privileges, between the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, and the publication of this constitution. And further, That all such of the officers described in the said charters respectively, as by the terms of the said charters, were to be appointed by the governor of the colony of New-York, with or without the advice and consent of the council of the said king, in the said colony, shall henceforth be appointed by the council established by this constitution, for the appointment of officers in this state, until otherwise directed by the legislature.

XXXVII. AND WHEREAS it is of great importance to the safety of this state, that peace and amity with the Indians within the same, be all times Importance of peace supported and maintained. AND WHEREAS the frauds with the Indians. too often practised towards the said Indians, in contracts made for their lands, have in divers instances been productive of dangerous discontents and animosities; BE IT ORDAINED, That no purchases or

contracts for the sale of lands, made since the fourteenth day of October, in the year of our Lord, one thousand seven hundred and seventy-five, or which may hereafter be made with or of the said Indians, within the limits of this state, shall be binding on the said Indians, or deemed valid, unless made under the authority, and with the consent of the legislature of this state.

XXXVIII. AND WHEREAS we are required by the benevolent principles of rational liberty, not only to expel civil tyranny, but also to guard against that spiritual oppression and intolerance, wherewith the bigotry and ambition of weak and wicked priests and princes have scourged mankind: This convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That

Free exercise of religion. the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall for ever hereafter be allowed within this state to all mankind. Provided, That the liberty of conscience hereby granted, shall not be so construed, as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

XXXIX. AND WHEREAS the ministers of the gospel are, by their profession, dedicated to the service of God and the cure of souls, and ought not to be diverted from the great duties of their function; therefore no minister

No minister of the gospel, or priest, to hold any office. of the gospel, or priest of any denomination whatsoever, shall at any time hereafter, under any pretence or description whatever, be eligible to, or capable of holding any civil or military office or place, within this state.

XL. AND WHEREAS it is of the utmost importance to the safety of every state, that it should always be in a condition of defence; and it is the duty of every man who enjoys the protection of society, to be prepared and willing to defend it: This convention therefore, in the name and by the authority of the good people of this state, doth ORDAIN, DETERMINE

Militia.

AND DECLARE, That the militia of this state, at all times hereafter, as well in peace as in war, shall be armed and disciplined, and in readiness for service. That all such of

Quakers.

the inhabitants of this state, being of the people called Quakers, as from scruples of conscience may be averse to the bearing of arms, be therefrom excused by the legislature; and do pay to the state such sums of money in lieu of their personal service, as the same may, in the judgment of

Magazine.

the legislature, be worth: And that a proper magazine of warlike stores, proportionate to the number of inhabitants, be for ever hereafter at the expence of this state, and by acts of the legislature, established, maintained, and continued in every county in this state.

XLI. And this convention doth further ORDAIN, DETERMINE AND DECLARE, in the name and by the authority of the good people of this

Trial by jury.

state, That trial by jury, in all cases in which it hath heretofore been used in the colony of New-York, shall be established, and remain inviolate for ever. And that no acts of attainder shall be passed by the legislature of this state, for crimes other than those committed before the termination of the present war; and that such acts shall not work a corruption of blood. And further, that the legislature of this state shall at no time hereafter, institute any new court or courts, but such as shall proceed according to the course of the common law.

All new courts to proceed according to the common law.

XLII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DE-
Naturalization of foreigners. CLARE, That it shall be in the discretion of the legislature to naturalize all such persons, and in such manner as they shall think proper; provided all such of the persons so to be by them naturalized, as being born in parts beyond sea, and out of the United States of America, shall come to settle in, and become subjects of this state, shall take an oath of allegiance to this state, and abjure and renounce all allegiance and subjection to all and every foreign king, prince, potentate and state, in all matters ecclesiastical as well as civil.

By order,

LEONARD GANSEVOORT,

PRESID. P. T.

This image shows a blank, aged, cream-colored page, likely an endpaper or flyleaf of a book. The paper has a slightly textured appearance with some minor discoloration and small dark spots, possibly due to age or handling. A vertical crease is visible near the left edge, and the overall tone is a warm, off-white or light beige.

L A W S

OF THE

STATE OF NEW-YORK.

Passed in the FIRST SESSION of the LEGISLATURE,
held at POUGHKEEPSIE, in DUTCHESS COUNTY,

C H A P. XII.

An ACT to organize the Government of this State.

Passed 16th March, 1778.

Bill revised by
council of revision, &c.
mode of proceeding in
this case.

I. **B**E it enacted by the people of the state of New-York represented in senate and assembly, and as it is hereby enacted by the authority of the same, That whenever and as often as a bill shall have been revised by the council, appointed to revise all bills about to be passed into laws, by the legislature (and which council shall, forever hereafter, be known by the name of, The Council of Revision) and the said Council shall have thereon declared, that it did not appear to them improper, that the said bill should become a law of this state; or if the said bill shall have been before the said council, by the space of ten days, and shall not have been returned by the said council, with their objections thereto, as by the constitution of this state is required; whereby the same shall have become a law of this state, a certificate thereof as the case may be, to be subscribed by the person administering the government of this state for the time being, shall be endorsed on such law: Whereupon the said person administering the government, shall, with his own proper hand, deliver such law to the secretary of state, for the time being, or his sworn deputy; who shall cause the same to be deposited in the secretary's office, and recorded in a book or books to be kept for that purpose. And that whenever, and as often as a bill, returned by the said council of revision, to be re-considered, shall, notwithstanding, be passed into a law, the president of the senate, or the speaker of the assembly, in whichsoever the same shall, upon such re-consideration, last pass, shall deliver such law, with his own proper hand, to the secretary of the state for the time being, or his sworn deputy, to be deposited and recorded as aforesaid; and the secretary of the state for the time being, or his sworn deputy, shall attend at every session of the legislature for the purpose of receiving laws, to be delivered to him as aforesaid.

II. And whereas arms have been devised for this state, and two several seals have been devised and made, one of the said seals, as and for the great seal, and the other, as and for the privy seal of this state (and which said seals are now in the custody and possession of his excellency the present governor)

Arms, and great and privy seal of the state, declared. Who shall have custody of the seals, and how to be applied.

Be it therefore further enacted by the authority aforesaid, That the said arms and seals shall severally be, and they are hereby respectively declared to be the arms, the great seal, and the privy seal of this state. That the person administering the government of this state, for the time being, shall have the custody and possession of the said seals. That the said seal, hereby declared to be the privy seal, shall be the seal for military commissions; and all such matters and things as heretofore, while this state, as the colony of New-York, was subject to the crown of Great-Britain, were issued, under the seal at arms of the governor or commander in chief of the colony for the time being, shall issue under the said seal, hereby declared to be the privy seal of this state: and that all such matters and things, as heretofore, while this state, as the colony of New-York, was subject to the crown of Great-Britain, were issued under the great seal of the colony, shall in future (the proceedings in the court of chancery herein after mentioned, excepted) issue under the said seal, hereby declared to be the great seal of this state; and shall be made out and entered of record, in the office of secretary of the state, in the same manner, as when this state, as the colony of New-York, was subject to the crown of Great-Britain, the same were made out and entered of record, in the office of secretary of the colony.

Judge of the court of probates, powers declared.

See to less. ch. 38.

III. And be it further enacted by the authority aforesaid, That the judge of the court of probates of this state, shall be vested with all and singular the powers and authorities, and have the like jurisdiction, in testamentary matters, which, while this state, as the colony of New-York, was subject to the crown of Great-Britain, the governor or commander in chief of the colony, for the time being, had and exercised, as judge of the prerogative court, or court of probates of the said colony: Except as to the nomination and appointment of surrogates in the several counties: who shall be nominated and appointed by the council of appointment, and commissioned under the great seal: And that all letters of administration, to be granted by the said judge, and all citations and other processes, issuing out of the said court, shall run in the name of the people of this state, and be tested in the name of the judge of the said court.

The judges of the four great courts, and judges of inferior courts, to have seals.

Chancery to have additional seal, 13 less. ch. 38.

The style of proceedings in chancery and the supreme court.

IV. And be it further enacted by the authority aforesaid, That the chancellor, the judges of the supreme court, the judge of the court of admiralty, the judge of the court of probates, and the judges of the inferior courts of common pleas in the several counties within this state respectively shall be, and they are hereby respectively authorized and required forthwith to cause seals, for the courts in which they respectively are judges, to be devised and made; and that all commissions, writs, processes and other proceedings, which heretofore by the course and practice of the court of chancery, while this state, as the colony of New-York, was subject to the crown of Great-Britain, were issued under the great seal, shall, in future, issue under the said seal, so to be devised and made, as and for the seal of the said court. That all proceedings in the court of chancery, and all proceed-

ings in the supreme, which heretofore, while this state, as the colony of New-York, was subject to the crown of Great-Britain, were by law supposed to be before the king himself, shall, in future, be before the people of this state.

V. And be it further enacted by the authority aforesaid, That the person administering the government of this state, as soon as conveniently may be, after the publication hereof, shall deliver to the secretary of the state, descriptions in writing, of the devices of the said arms and seals, hereby declared to be the arms, great seal and privy seal of this state; and that the chancellor, the judges of the supreme court, the judge of the court of admiralty, and the judge of the court of probates, shall severally, as soon as conveniently may be, after they shall have caused seals to be devised and made for the courts in which they respectively are judges, as aforesaid, deliver to the secretary of the state, descriptions in writing, of the said several seals; which said several descriptions in writing, the said secretary of the state shall deposit and record in his office, there to remain as public records of this state.

Commissions, and law proceedings good on paper for one year after the war.

VI. And be it further enacted by the authority aforesaid, That all commissions and law proceedings, shall, during the present war, and for and during the space of one year after the expiration of the same, be as valid, legal and effectual, to all intents and purposes, on paper, as if the same were on parchment.

Courts of law to be held on the same Days, as in 1774.

See 10th. Sess. Ch. 10.

The supreme court for one year at such place as the person administering the government shall direct.

Altered 8th Sess. Ch. 6r. Times and places of holding courts of common pleas and sessions.

Altered 10th sess. ch. 10.

VII. And be it further enacted by the authority aforesaid, That the supreme court of judicature of this state, and the inferior courts of common pleas, and the courts of general or quarter sessions of the peace in the several counties within this state, shall be held on, and at such days and times, as they were respectively held in the year of our Lord one thousand seven hundred and seventy-four. That the said supreme court shall, for one year next to come, be held at such place or places, as the person administering the government of this state, for the time being, shall, by proclamation, from time to time, appoint and direct; and that all processes in the said supreme court, shall be returnable wherever the said court shall be held within this state; and that the said several inferior courts of common pleas, and courts of general or quarter sessions, shall be held at the usual places in the respective counties. That all processes returnable in the supreme court, and to be issued between the passing of this act, and the next ensuing term, shall be tested, on the thirty-first day of January last past; and that all processes to be issued, in the several inferior courts of common pleas, between the passing of this act, and the next ensuing term of each respective court, shall be tested on the day, which would have been the test had the several courts been held uninterruptedly, in manner heretofore accustomed: Provided nevertheless, That where, by reason of the invasion or ravages of the enemy, the inferior courts of common pleas, and courts of quarter or general sessions of the peace, in any of the counties of this state, cannot be held at the usual places, it shall and may be lawful to and for the person administering the government of this state, for the time being, by proclamation from time to time, to appoint such other places for holding the said several inferior courts of common pleas, and courts of quarter or general sessions of the peace, as he shall deem most convenient, in the respective

counties; except in the county of Charlotte; and that in the said county, the inferior court of common pleas, and the court of quarter or general sessions of the peace in the said county, shall be held at New-Perth, in the said county, for three years next to come, or until the legislature shall otherwise provide, which shall first happen.

VIII. And be it further enacted by the authority aforesaid,
Secretary, ex officio, clerk of council of appointment. Their acts, records, and commissions how to be made out.
 That the secretary of this state, for the time being, shall, ex officio, be clerk of the council of appointment, and shall exercise the said office in person, or by his sworn deputy.

That on all nominations and appointment to offices, within this state, by the council of appointment, the order or orders of the said council thereupon, shall be fairly written, and entered in the minutes of the proceedings of the said council (which are hereby declared to be public records of this state) and shall be subscribed by such majority of the said council as shall agree to each respective order. Whereupon the clerk of the said council shall forthwith cause commissions to be made out agreeable to such orders, and delivered to the governor for the time being, in order that the same may be sealed.

[The 9th section of this act is become obsolete, by the adoption of the Constitution for the United States.]

C H A P. XIV.

An ACT to ascertain the places from whence the Milage Fees of the respective Sheriffs of the several Counties in this State, shall be computed.

Passed 19th March, 1778.

BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That from and after the passing of this act, the sheriffs of the respective

From what places the sheriffs to compute milage on service of process.

counties of this state, shall compute their milage fees, for the service of all writs and process, hereafter by them to be served, and subject to the payment of milage fees, from the respective places herein after mentioned, and from no other places whatsoever; that is to say, The sheriff of the city and county of New-York, from the city-hall of the said city; the sheriff of King's county, from the court-house in the said county; the sheriff of Richmond county, from the court-house in the said county; the Sheriff of the county of Suffolk, from a path commonly known by the name of the Wading River path, about seven miles to the westward of the county-hall, in the said county, at the junction of the said path with the country road, which passes through Nassau island, about the middle thereof; the sheriff of Queen's county from a certain pond, commonly called Wind-Mill pond, near the north side of Hemstead-Plains; the sheriff of Dutchess county from the house wherein Myndert Vielle, Esq. now lives, in Beekman's precinct; the sheriff of Westchester county from the house of William Ogden, in North-Castle; the sheriff of Orange county, on the north side of the highlands, from the court-house in the township of Goshen; and on the south side of the highlands from the court-house in the precinct of Flaverstraw, in the said county; the sheriff of the county of Ulster from the house of Mrs. Ann Dubois, in the neighbourhood of the New-Paltz, in the said county; the sheriff of the County of Albany, from the city-hall in the city of Albany; the sheriff of the

county of Tryon, from the pass in the mountain called Anthony's Nose, in the said county; the sheriff of the county of Charlotte, from the meeting-house in the town of New-Perth, in the said county; the sheriff of the county of Cumberland, from the court-house in the said county; and the sheriff of the county of Gloucester, from the meeting house in the town of Newbury, in the said county.

II. *And be it further enacted by the authority aforesaid,*
All former regulations repealed. That all former regulations, respecting the places from which the sheriffs respectively were required to compute their mileage, on the service of writs or processes, shall be, and they hereby are repealed, annulled and made void; any thing in any act or acts of the legislature of the colony of New-York, contained to the contrary thereof in any wise notwithstanding.

C H A P. XXV.

An ACT to dispense with the usual Mode of administering Oaths, in favor of Persons having conscientious Scruples respecting the same.

Passed 1st of April, 1778.

Preamble.

WHEREAS many of the inhabitants of this state, have conscientious scruples about the present mode of administering oaths, by laying the hand on and kissing the gospels; for the relief of all such persons,

Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That all and

Persons having conscientious scruples, to be sworn with uplifted hand. every person or persons, empowered to administer oaths within this state, shall be, and they hereby are empowered, authorized and required, to tender and administer the said oaths to all such person or persons as shall declare they have such conscientious scruples, in the form following, to wit: The said person or persons shall, with his, her or their hand or hands uplifted, swear by the ever-living God, and shall not be compelled to lay his, her or their hand or hands, on the gospels, or kiss the same: And that all oaths to be administered agreeable to the mode prescribed by this act, shall be, and the same are hereby declared to be as good, valid, and effectual, to all intents and purposes, as if the same

And if guilty of perjury, to suffer as if sworn on the gospels. had been administered by laying the hand on, and kissing the gospels. And all persons who being sworn agreeable to the said mode, and shall be guilty of false swearing, or wilful and corrupt perjury, and be convicted thereof, shall incur and suffer the same pains, penalties or punishments, as if they had been respectively sworn on the holy Evangelists.

LAWS of the State of NEW-YORK.

Passed in the First Session of the Legislature, held at Poughkeepsie, in Dutchess County, by Adjournment.

C H A P. XLVII.

Amended 2d sess. *An ACT more effectually to prevent the Mischiefs arising from the Influence and Example of Persons of equivocal and suspected Characters in this State.*
ch. 10.

Passed 30th June, 1778.

Preamble.

WHEREAS certain of the inhabitants of this state, have, during the course of the present cruel war, waged by the king and parliament of Great-Britain against the people of these states, affected to maintain a neutrality, which there is reason to suspect was in many instances dictated by a poverty of spirit, and an undue attachment to property: And whereas divers of the said persons, some of whom advocated the American cause, until it became serious, have, notwithstanding the forbearance of their countrymen, and contrary to the faith pledged by their paroles; ungratefully and insidiously, from time to time, by artful misrepresentations, and a subtle dissemination of doctrines, fears and apprehensions, false in themselves, and injurious to the American cause, seduced certain weak minded persons from the duties they owed their country: And whereas the welfare of this state, loudly demands that some decisive measures be taken with respect to the said persons; and it being repugnant to justice as well as good policy, that men should be permitted to shelter themselves under a government, which they not only refused to assist in rearing, but which some of them daily endeavour to undermine and subvert: And whereas such few of the said persons, as may have been led to take a neutral part by conscientious doubts and scruples, have had more than sufficient time to consider and determine the same;

I. Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the com-

Commissioners of conspiracies to cause persons of neutral and equivocal characters to take an oath or affirmation.

missioners appoiated for enquiring into, detecting and defeating all conspiracies which may be formed in this state, against the liberties of America, or any three of them, be, and they hereby are authorized and strictly charged and required, to cause all such perions of neutral and equivocal characters in this state, whom they shall think have influence sufficient to do mischief in it, to come before them, and to administer to the said persons respectively, the following oath, or if of the people called Quakers, affirmation, viz.

The form thereof.

I A. B. do solemnly, and without any mental reservation or equivocation whatever, swear and call God to witness (or if of the people called Quakers, affirm) That I do believe and acknowledge the state of New-York to be, of right, a free and Independent state.

And that no authority or power can, of right, be exercised in or over the said state, but what is or shall be granted by or derived from the people thereof: And further, That as a good subject of the said free and independent state of New-York, I will, to the best of my knowledge and ability, faithfully do my duty; and as I shall keep or disregard this oath: So help and deal with me Almighty God.

And on refusal to read the oath within the enemy's lines, &c. II. *And be it further enacted by the authority aforesaid,* That if on the said oath or affirmation being so tendered, the said person or persons shall refuse to take the same, the said commissioners do forthwith remove the said person or persons so refusing to any place within the enemy's lines, and by writing under their hands and seals, certify the names of such person or persons to the secretary of this state, who is hereby required to record and file the said certificates.

III. *And be it further enacted by the authority aforesaid,* That if any of the said neutrals shall abscond or absent himself with an apparent view to avoid the force of this act, the said commissioners shall, by notice published in one or more of the news-papers of this state, demand of the said person or persons, so absconding or absenting, to appear before them, at such place in this state, and at such time, not exceeding twenty-one days from the time of such publication, as they shall assign: And further, That default in such appearance shall be judged to amount to and is hereby declared to be a refusal to take the said oath or affirmation.

IV. *And be it further enacted by the authority aforesaid,* That if any of the persons removed to places within the enemy's lines by the said commissioners, in pursuance of this act, or, who having as aforesaid, absconded or absented, shall not, on notice as aforesaid, appear before the said commissioners and take the oath or affirmation aforesaid, shall thereafter be found in any part of this state; such person or persons so found, shall on conviction thereof, be adjudged guilty of misprision of treason.

V. And to the end that this state may be in some measure compensated for the injuries it has sustained, by the evil example or practices of the said neutrals, and that others may be deterred on similar occasions, from acting a part so unmanly and ignominious: *Be it further enacted by the authority*

aforesaid, That all lands held in this state, on the twenty-sixth day of June instant, in fee simple, or fee tail, or which may hereafter be acquired by, or devised, granted, or descend to any of the persons who shall refuse to take the aforesaid oath or affirmation, when called upon by the said commissioners, shall forever thereafter be charged with double taxes, in whosoever hands the said lands may hereafter be.

VI. *And be it further enacted by the authority aforesaid,* That the said commissioners, previous to the removal of the several persons within the enemy's lines, shall, from time to time, notify the person administering the government of this state for the time being, of the several persons so to be removed, who is hereby authorized to detain and confine such of the said persons as he shall think proper, for the purpose of exchanging them for any of the subjects of this state in the power of the enemy.

VII. *And be it further enacted by the authority aforesaid,* That the person administering the government of this state for the time being, be, and he is hereby required to do his best endeavours, that this act be fully and speedily carried into execution, and all magistrates, sheriffs and constables, are required to be aiding therein.

Not to be raised until special provision be made for the purpose. 3 Jeff. ch. 47. sec. 10.

Their lands double taxed.

LAWS of the State of NEW-YORK,

Passed in the Second Session of the legislature, held at Poughkeepsie, in Dutchess County, by Adjournment.

C H A P. XI.

An ACT to authorize the person administering the government of this State, for the Time being, to transmit Copies of the laws of this State, to the Honourable the Congress of the United States, and to the Executive Authority of each of the said United States.

Passed 17th February, 1779.

Preamble.

WHEREAS an interchange of the laws passed and to be passed from time to time, in the several United States may be of public utility;

Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That the

The person administering the government, to send 3 copies of the laws to the congress, and to the executive of each state.

person administering the government of this state for the time being, shall be, and he is hereby authorized and required to transmit, from time to time, three copies of all the laws passed and to be passed by the legislature of this state, to the honourable the Congress of the United States, and to the executive authority of each of the said United States, and to request a reciprocal interchange from each of the said states,

C H A P. XXII.

An ACT to enable the Recovery of the Continental Demands, and for punishing the Misbehaviour of Persons in Continental Employ.

Passed 5th March, 1779.

Preamble.

WHEREAS many and great mischiefs to the general interest of the United States of America, have already arisen and daily do arise, from the want of an established mode in this state, for the recovery of their just demands, and for punishing by a due course of law, such persons as being subjects of, or temporary residents within this state, are guilty of frauds, or other abuses and misdemeanors, in the service or employ of the said United States; To remedy those evils:

I. Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That the Congress of the said United States shall be, and they are hereby authorized from henceforth and for ever after, by their attorney or procurator, to be appointed by their resolution or act, and by and in the name of the United States of America,

The Congress authorized by their attorney or procurator to prosecute suits in any courts within this state.

to sue, implead and prosecute to final judgement, decree and

recovery, with and subject to costs of suit, in cases wherein by law costs are allowed to or against private persons, all and all manner of suits and actions, personal in any court of law or equity, within this state, against any person or persons whatsoever; and the same to compound, discontinue, withdraw or release, as they shall think fit; and that in every such action or suit at law,

Defendant may plead the general issue, and give the special matter in evidence, and may discount.

the defendant or defendants may either in his, her or their own right, or as executor or administrator, or executors or administrators, to other or others plead the general issue, and give the special matter of his, her or their defence in evidence, on giving due notice thereof in writing, with the plea; and shall also on such plea and notice, be allowed to discount and set off against the plaintiff's demand, all such matters and things, as are now by law allowed to be discounted and set off in cases wherein private persons are both plaintiff and defendant in the suit.

II. And for preventing all frauds, abuses and misdemeanors from being committed, and for punishing such as have already been committed in their services by persons in their employ; *Be it enacted by the authority aforesaid*, That all such frauds, abuses and misdemeanors, shall be deemed,

Mole of punishing frauds.

construed and esteemed in law, to have been, and to be committed against the United States of America, and the offender or offenders shall, for his and their offences respectively, be liable to be prosecuted by information or indictment, and convicted for the same, as done and perpetrated against the said United States, in like manner as persons may by law, be criminally prosecuted and convicted for frauds, abuses and misdemeanors, in any public office in this state, as done and committed against the people of this state.

III. And whereas there is great reason to believe, that many persons employed in the continental service, have made it a practice to apply the public monies entrusted to them for public use, in their own private traffic and commerce, and for their own private profit and emolument, whereby the troops of the United States have been, and are daily reduced to great extremities, for the want of necessaries, and the military operations of the United States, are thereby greatly obstructed and impeded; *Be it therefore enacted by the authority aforesaid*, That if any person or persons in the service of the said United States, and entrusted with the public monies thereof, shall, after the fifteenth day of April next, apply the same to any other use or uses than such

Penalties.

for which the same shall be, or has been put into his or their hands, or being thus entrusted, shall by himself or themselves, or by other or others, directly or indirectly, carry on any traffic or commerce, for his or their own private emolument, he or they so offending shall, for every offence, forfeit the sum of one thousand pounds, to be recovered with costs of suit, in any court of record within this state, by any person who will sue for the same, in his own name, and the name of the United States of America; the one moiety of the said penalty to his own use, and the other moiety thereof to be paid into the treasury of this state, for the use of the said United States. And the defendant may plead not guilty thereto, and give the special matter of his defence in evidence, and have no essoin, nor any more than one imparlance; and being convicted in such popular action, shall thenceforth and for ever thereafter, be disabled to hold any office or place of trust or profit; under this state.

LAWS of the State of NEW-YORK.

Passed in the Third Session of the Legislature, held at Kingston, in Ulster County.

C H A P. XXV.

An ACT for the Forfeiture and Sale of the Estates of Persons who have adhered to the Enemies of this State, and for declaring the Sovereignty of the People of this State, in respect to all Property within the same.

Passed 22d October, 1779.

Preamble.

WHEREAS during the present unjust and cruel war, waged by the king of Great-Britain, against this state; and the other United States of America, divers persons holding or claiming property within this state, have voluntarily been adherent to the said king, his fleets and armies, enemies to this state, and the said other United States, with intent to subvert the government and liberties of this state, and the said other United States, and to bring the same in subjection to the crown of Great-Britain; by reason whereof, the said persons have severally justly forfeited all right to the protection of this state, and to the benefit of the laws under which such property is held or claimed: And whereas the public justice and safety of this state absolutely require, that the most notorious offenders should be immediately hereby convicted and attainted of the offence aforesaid, in order to work a forfeiture of their respective estates, and vest the same in the people of this state: And whereas the constitution of this state, hath authorised the legislature to pass acts of attainder for crimes committed before the termination of the present war:

I. Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That John Murray, earl of Dunmore, formerly governor of the colony of New-York; William Tryon, Esq. late governor of the said colony; John Warts, Oliver De Lancey, Hugh Wallace, Henry White, John Harris Cruger, William Axtell, and Roger Morris, Esquires, late members of the council of the said colony; George Duncan Ludlow, and Thomas Jones, late justices of the supreme court of the said colony; John Tabor Kempe, late attorney-general of the said colony; William Bayard, Robert Bayard, and James De Lancey, now or late of the city of New-York, Esquires; David Matthews, late mayor of the said city; James Jauncey, George Folliot, Thomas White, William M'Adam, Isaac Low, Miles Sherbrook, Alexander Wallace, and John Weatherhead, now or late of the said city, merchants; Charles Inglis, of the said city, clerk, and Margaret his wife; Sir John Johnson, late of the county of Tryon, knight and baronet; Guy Johnson, Daniel Claus, and John Butler, now or late of the said county, Esquires; and John Joest Herkemer, now of

Persons by name,
Ipso Facto, attainted
of the offence of ad-
hering to the enemies
of the state.

late of the said county, yeoman; Frederick Philipse, and James De Lancey, now or late of the county of Westchester, Esquires; Frederick Philipse (son of Frederick) now or late of the said county, gentleman; David Colden, Daniel Kiffam, the elder, and Gabriel Ludlow, now or late of Queen's county, Esquires; Philip Skeene, now or late of the county of Charlotte, Esq. and Andrew P. Skeene, son of the said Philip Skeene, late of Charlotte county; Benjamin Seaman, and Christopher Billop, now or late of the county of Richmond, Esquires; Beverly Robinson, Beverly Robinson the younger, and Malcom Morrison, now or late of the county of Dutchess, Esquires; John Kane, now or late of the said county, gentleman; Abraham C. Cuyler, now or late of the county of Albany, Esq. Robert Leake, Edward Jessup and Ebenezer Jessup, now or late of the said county, gentlemen; and Peter Du Bois, and Thomas H. Barclay, now or late of the county of Ulster Esquires; Susannah Robinson, wife to the said Beverly Robinson, and Mary Morris, wife to the said Roger Morris; John Rapalje, of King's county, Esq. George Muirson, Richard Floyd, and Parker Wickkam, of Suffolk county, Esquires; Henry Lloyd, the elder, late of the state of Massachusetts-Bay, merchant; and sir Henry Clinton, knight, be, and each of them are hereby severally declared to be, Ipso Facto, convicted and attainted of the offence

Their estates forfeited. and that all and singular the estate, both real and personal, held or claimed by them the said persons severally and respectively, whether in possession, reversion or remainder, within this state, on the day of the passing of this act, shall be, and hereby is declared to be forfeited to, and vested in the people of this state.

II. *And be it further enacted by the authority aforesaid,* That the said several persons herein before particularly named, shall be, and hereby are declared to be for ever banished from this state; and each and every of them, who shall at any time hereafter be found in any part of this state, shall be, and are hereby adjudged and declared guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.

The said persons banished from this state. III. And to the end, That for the purpose aforesaid, convictions and attainders for the offence aforesaid, may, in pursuance of this act, be had against other offenders than those herein before particularly named; *Be it further enacted by the authority aforesaid,* That it shall and may be lawful for the grand jurors at any supreme court of judicature to be held for this state, or at any court of oyer and terminer and general gaol delivery, or general and quarter sessions of the peace, to be held in and for any county within this state, whenever it shall appear to such grand jurors by the oath of one or more credible witness or witnesses, that any person or persons, whether in full life or deceased, generally reputed, if in full life, to hold or claim, or if deceased to have held or claimed, at the time of their death respectively, real or personal estate within this state, hath or have been guilty of the offence aforesaid, to prefer bills of indictment against such persons as shall then be in full life, for such offence, and in relation to the offence committed by such persons in their lives time, as shall then be deceased, severally and respectively, notwithstanding that such offence may have been committed elsewhere than in the county for which such grand jurors shall be summoned: That in every indictment to be taken in pursuance of this act, the offence or offences shall be charged to have been committed in the

Defects in the proceedings remedied 5th sess. chap. 4.

Convictions confirmed 7th sess. ch. 64. sec. 23.

county where the indictment shall be taken, notwithstanding such offences or offences may have been committed elsewhere; and it shall not be necessary to set forth specially, whether the several persons charged in such indictment, were respectively deceased or in full life, or were reputed to hold or claim real or personal estate within this state. And on every such indictment shall be indorsed, that the same was taken in pursuance of this act, and the day when the same was preferred into court.

IV. *And be it further enacted by the authority aforesaid,* That whenever and as often as any such indictment shall be taken, against any person or persons, the sheriffs of the respective counties, where such indictments shall be taken, shall forthwith cause notices thereof, agreeable to such form as is herein after mentioned, to be published in one or more of the public newspapers within this state, for at least four weeks.

V. *And be it further enacted by the authority aforesaid,* That in every case of a neglect to appear and traverse agreeable to the sheriff's notice, the several persons charged in such indictment, whether in full life or deceased, shall respectively be and hereby are declared to be, and shall be adjudged guilty of the offences charged against them respectively. And the several persons who shall in pursuance of this act, either by reason of such default, in not appearing and traversing as aforesaid, or upon trial, be convicted of the offence aforesaid, shall forfeit all and singular the estate, both real and personal, whether in possession, reversion or remainder, held or claimed by them respectively, within this state, to the people of this state; and judgment shall accordingly be awarded in the supreme court of this state, against the said persons respectively. And such forfeitures, as well of the estates which were at the time of their death, respectively, of persons deceased, as of persons in full life, at the time of conviction, shall be deemed to have accrued; and the estates accordingly attached to and vested in the people of this state, at and from the day charged in each respective indictment, most distant from the day of the taking thereof. Provided nevertheless, That where a trial shall be had upon any such indictment, the forfeiture shall in such case be deemed to have accrued from the day to be found by the verdict of the jury, by which such persons shall be respectively convicted, most distant from the day of the taking of the indictment; any other day to be charged in the indictment notwithstanding. And provided further, That the several persons who shall have been pardoned in pursuance of a declaration or ordinance of the convention of this state, passed the tenth day of May, in the year of our Lord one thousand seven hundred and seventy-seven, offering free pardon to such of the subjects of the said state, as having committed treasonable acts against the same, should return to their allegiance; or in consequence of any proclamation or proclamations, heretofore issued by the commander in chief of the army of the United States of America, may respectively plead their pardons to indictments, taken in pursuance of this act, in like manner as they might or could do to indictments for high treason, taken in the ordinary course of law. And provided further, That each and every person, who shall at any time before the fourth day of April, in the year of our Lord, one thousand seven hundred and seventy-eight, have taken the oath of allegiance to this state, before the convention or councils of safety of this state; or before the committee of the said convention, appointed for enquiring into, detecting and defeating all conspiracies, which may be formed in this state,

Forfeiture on conviction.
Proviso in favour of persons pardoned.

Proviso in favour of those who shall have taken the oath of allegiance before the 4th of April, 1778.

against the liberties of America; or the commissioners appointed for the like purpose, or a county, district or precinct committee; shall and may plead such taking the oath of allegiance in bar to any indictment, to be taken in pursuance of this act, for offences committed before the day on which they respectively took such oath.

All indictments on this law, taken in the other courts, to be returned into the supreme court, and there tried.

VI. *And be it further enacted by the authority aforesaid,* That all indictments to be from time to time taken in pursuance of this act, at any court of oyer and terminer, or general gaol delivery, or general or quarter sessions of the peace, shall, by the clerks of the said courts, respectively be returned, under their respective hands and seals, into the supreme court of this state, and shall be tried at the bar of the said court; and upon the trial of any such indictment, no greater number of witnesses shall be required than are required by law in cases of felony, without benefit of clergy.

VII. *And be it further enacted by the authority aforesaid,* That the several sheriffs shall, from time to time, respectively return, under their hands and seals, into the supreme court of this state, the several numbers of the newspapers containing the notices published by them respectively, there to remain as records of such notices, until judgments shall be had against the several persons named in such notices respectively.

VIII. And to the end, That in prosecutions for the offence aforesaid, in pursuance of this act, no advantage may be taken of mere matters of form; and that the defendants may notwithstanding be fully apprized of the several matters charged against them; in order to their defence, *Be it further enacted by the authority aforesaid,* That it shall be sufficient in all indictments to be taken for the offence aforesaid, in pursuance of this act, to charge generally, that the several persons therein charged, did, on the several days, and at the several places therein mentioned, adhere to the enemies of this state,

The grand jurors to deliver into court the examinations of the witnesses.

and the grand jurors shall, at the time they deliver any such indictment into court, deliver into court the examinations or depositions of the witness or witnesses, upon whose testimony such indictment was found, to be filed in court, together with the indictment; and the defendants shall respectively upon application, be entitled to copies of the indictments against them respectively, and of such examinations or depositions; and the prosecutor on the part of the state, shall not, upon the trial, be permitted to give evidence of any overt acts, other than such as shall be charged in such examinations or depositions; and the clerks of the several courts of oyer and terminer, and general gaol delivery, and general or quarter sessions of the peace, shall return such examinations or depositions, into the supreme court, in like manner as is herein before directed, with respect to indictments, taken at the courts of oyer and terminer and general gaol delivery, or general or quarter sessions of the peace.

IX. *And be it further enacted by the authority aforesaid,* That besides the several matters by the law of England, declared to be evidence and overt acts of high treason, in adhering to the king's enemies, and which are hereby declared to be evidence and overt acts of high treason, in adhering to the enemies of the people of this state as sovereign thereof; the following matters shall be, and are hereby declared to be evidence and overt acts of adhering to the enemies of the people of this state, whereon and for which persons may, in pursuance of this act, be indicted and convicted, for the offence aforesaid; that is to say, Being at any time since the ninth day of July, in the year of our lord one

What shall be deemed evidence and overt acts of adhering to the enemies of this state.

thousand seven hundred and seven-six (the day of the declaration of the independence of this state within the same) in any part of the United States, not in the power or possession of the fleets or armies of the king of Great-Britain, and afterwards voluntarily withdrawing to any place within the power or possession of the king of Great-Britain, his fleets or armies; or being apprehended by order of, or authority from the commander in chief of the armies of the said United States; or of or from the provincial congress, or conventions or committees thereof, or councils of safety of this state; or the commissioners above mentioned, appointed for enquiring into, detecting and defeating all conspiracies which may be formed in this state against the liberties of America; or county, district, or precinct committees within this state; or by the supreme executive authority of this state, and confined within certain limits upon engagement, by parole or otherwise, not to go beyond such limits, and breaking such engagements, and voluntarily escaping to any place in the power of the fleets or armies of Great-Britain; or being so confined as aforesaid, and afterwards permitted by proper authority, to go to any place in the power of the fleets or armies of Great-Britain, upon engagement to return within a certain given time; and not returning within such time, but afterwards remaining at any place within the power or possession of the fleets or armies of Great-Britain.

Preamble with ref.
pect to certain persons
within the power of
the enemy.

X. And whereas divers persons, inhabitants and well affected subjects of this state, at the time of the declaration of the independence thereof, who had their fixed residence in the southern district of this state, were obliged, on the invasion of the said district by the enemy, to fly before their superior force, into parts of this, or some other or others of the said United States, and some of them having thereby abandoned all or the greatest part of their property, were so reduced as to have been respectively obliged, through absolute necessity, and the want of sufficient habitations, and the necessary means of support and subsistence, to return to their respective places of abode; and others of them, for the same cause, having deserted their habitations, and fled in manner aforesaid, have for particular reasons, been permitted, either by the commander in chief of the armies of the said United States, or other lawful authority, in the places to which they respectively fled, to return within the power of the enemy, where they also severally still do reside; *Be it therefore further enacted by the authority aforesaid, and it is hereby provided,* That nothing in this act

Exemptions in their
behalf.

contained, shall be construed to extend or to affect the said persons, severally and respectively, or any or either of them except such of them as since his, her or their return to any place or places within the power of the enemy, has or have done any act or thing, which in judgment of law would be construed, deemed and adjudged an adherence to the enemies of this state, and high treason against the people thereof, had such person or persons respectively, voluntarily and freely, and without any such cause as aforesaid, returned within the power of the enemy. In which case such return within the power of the enemy, and such act or thing as aforesaid, shall in judgment of law, be construed, deemed, and is hereby declared to be adjudged an adherence to the enemies of the people of this State.

No attainder on this
law to exempt from
punishment in ordi-
nary courts.

XI. *And be it further enacted by the authority aforesaid, and it is hereby provided,* That no conviction or attainder, in pursuance of this act, shall be construed to exempt any person or persons from being apprehended, tried, convicted, attainted and executed for high treason, according to the ordinary course of law.

Conveyances since
9th July, 1776, pre-
sumed fraudulent.

XII. *And be it further enacted by the authority aforesaid,* That all conveyances and assignments of any real or personal estate, made or executed since the ninth day of July, in the year of our Lord one thousand seven hundred and seventy-six, by any or either of the persons, who are immediately convicted and attainted by this act; or any or either of the persons who shall be convicted or attainted in pursuance of this act; or any or either of the persons, who shall be convicted or attainted of high treason, in the ordinary course of law, for offences committed during the present war, shall be presumed to be fraudulent and to have been made with intent to prevent a forfeiture of the estates, by such conveyances or assignments respectively intended to be conveyed or assigned; and upon every trial, wherein any such conveyance or assignment shall come in question, the burthen of the proof shall lay upon the person or persons claiming under such conveyance or assignment; that the same was made and executed *bona fide*, for a valuable consideration, and not with intent to prevent a forfeiture as aforesaid.

And proof of their
being otherwise to lay
upon the claimant.

XIII. *And be it further enacted by the authority aforesaid,* That all titles, estates and interests, by executory devise or contingent remainder, claimed by any person hereby, or by virtue of this law to be convicted; shall on conviction be as fully forfeited to all intents, constructions and purposes, in the law whatsoever, to the people of this state, as any other titles, claims, estates, or interests whatsoever.

XIV. *And be it further enacted by the authority aforesaid,* That the absolute property of all messuages, lands, tenements and hereditaments, and of all rents, royalties, franchises, prerogative, privileges, escheats, forfeitures, debts, dues, duties and services, by whatsoever names respectively, the same are called and known in the law; and all right and title to the same, which next and immediately before the ninth day of July, in the year of our Lord one thousand seven hundred and seventy-six, did vest in, or belong, or was, or were due to the crown of Great-Britain, be, and the same, and each and every of them, hereby are declared to be, and ever since the said ninth day of July in the year of our Lord one thousand seven hundred and seventy-six, to have been, and for ever hereafter shall be vested in the people of this state, in whom the sovereignty and seignory thereof are and were united and vested, on and from the said ninth day of July, in the year of our Lord one thousand seven hundred and seventy-six.

XV. *And be it further enacted, by the authority aforesaid,* That the person administering the government of this state for the time being, shall be, and he is hereby authorised and required, by and with the advice and consent of the council of appointment, to appoint, during the pleasure of the said council and commission, under the great seal of this state, three commissioners of forfeitures, for each of the great districts of this state: That the said commissioners, or a majority of them, shall be and hereby are authorised and required, from time to time, to sell and dispose of all real estates within their respective districts, forfeited or to be forfeited to the people of this state, at public vendue, to the highest bidder or bidders, and in such parcels as they shall from time to time think proper, first giving eight weeks notice of each sale, in one or more of the public news-papers in this state, containing a description as to the quantity, by estimation, of the lands or tenements to be sold, the situation thereof, and the

Commissioners to be
appointed for the sale
of forfeited estates
and how they are to
proceed.

Amended and alter-
ed, 4th sess. ch. 13
and 51.
5th sess. ch. 45.
7th sess. ch. 64.

name or names of the person or persons, by the conviction and attainder of whom the said lands or tenements are deemed to have become forfeited; and to make, seal and deliver to the purchaser or purchasers respectively, good and sufficient deeds and conveyances, in the law, to vest the same in them respectively, and their respective heirs and assigns, upon such purchaser or purchasers respectively producing such receipt from the treasurer, as is herein after mentioned: That every such purchaser and purchasers, shall by virtue

Powers given commissioners by this act to make sale of the lands.
Sec. 54.

of such deeds and conveyances, respectively, be so vested in title, seisin and possession of the lands and tenements so purchased, as to have and maintain in his, her or their name or names, any action for the recovery thereof, or damages relating thereto; any actual seisin or possession thereof, in other person or persons, notwithstanding: That every such deed and conveyance, shall be deemed to operate as a warranty from the people of this state, to the purchaser or purchasers respectively, and their respective heirs and assigns, for the lands or tenements thereby respectively granted and conveyed, against all claims, titles and incumbrances whatsoever; and such purchaser or purchasers respectively, and their respective heirs and assigns, shall in case of eviction, have such remedy and relief upon such warranty, in such manner as shall be more particularly provided for in such future act or acts of the legislature, as are herein after mentioned. Provided, That the said commissioners shall not be authorized to sell any lands, in larger parcels than the quantity of five hundred acres in each parcel; that no more than one farm shall be included in one and the same sale; and that the sales shall be made in the county where the lands or tenements to be sold, respectively lie. And provided further, That nothing

No sales to be made before first October, 1783.
Altered 3d session ch. 51.

in this law contained, shall be construed, deemed, esteemed or adjudged, to authorize the commissioners to be appointed by virtue hereof, to make sale of any of the lands, messuages, tenements or hereditaments hereby forfeited, or by virtue hereof to become forfeited, before or until the first day of October next; and that all such sales shall be, and the same hereby are wholly prohibited until that day.

XVI. And whereas it is impossible at present to form an estimate of what will be a proper compensation to the said commissioners, for their services and expences in executing the business hereby committed to them: *Be it therefore further enacted by the authority aforesaid,* That the public faith of this state shall be, and hereby is pledged to the said commissioner, for such allowance and compensation to them for their services and expences (besides the expences of surveyors, clerks, and other incidental charges) as shall hereafter by the legislature, be deemed just and reasonable.

XVII. *And be it further enacted by the authority aforesaid,* That the treasurer of this state shall be, and he is hereby authorized, out of the monies which now are, or hereafter may be in the treasury, to advance to the said commissioners for each district, a sum not exceeding two thousand pounds, to defray the expence of the business hereby committed to them.

XVIII. And whereas in many instances, lands, the reversion or remainder whereof is, or may become forfeited to this state, are possessed by tenants who have, at considerable expence, made or purchased the improvements on the same, and which tenants have constantly, uniformly and zealously, since the commencement of the present war, endeavoured to defend and maintain the freedom and independence of the United States; *Be it therefore further enacted by the authority aforesaid,* That where lands, the reversion or remainder

Provision in favor
of tenants of forfeited
lands.

whereof is hereby, or may become forfeited to the people of this state, shall be possessed by any tenant of the character above described, and who or whose ancestor, testator or intestate, shall have made or purchased the improvements on the same, they shall continue in possession at their former rents, and be at liberty as heretofore, to transfer their improvements, until the fee simple of the said lands shall be sold, they paying their respective rents, and the present arrearages thereof in money, equal to the current prices of the articles of produce, in which their rents were heretofore paid, into the treasury of this state, if such rents were reserved in produce; or if reserved in money, then in so much money, as will be equivalent to the price of wheat at seven shillings per bushel; and that when the fee simple of the said lands shall be sold by the commissioners, to be appointed in pursuance of this act, they shall cause such lands to be appraised by three appraisers, at what shall be deemed the then present value thereof, exclusive of the improvements thereon, at the time of appraising: that one of the said appraisers shall be elected by the commissioners, another by the tenant claiming the benefit intended by this clause, and the third by the said other two appraisers; that the said appraisers, previous to the making of such appraisement, shall each of them take an oath, and which oath the said commissioners are hereby authorized to administer, well and truly to appraise the lands held by such tenant, at what shall be deemed the then value thereof, exclusive of the improvements thereon; and upon payment into the treasury by such tenant, of the sum at which such lands shall be so appraised, within three months after the making of such appraisement, together with all arrearages of rents then due thereon; the commissioners shall convey the lands so appraised to such tenant, in like manner as if such lands had been sold at public vendue, and such tenant had appeared, and been the highest bidder for the same: Provided, That no person being a tenant himself, or of affinity or consanguinity to the tenant, requiring such appraisement to be made, shall be an appraiser.

XIX. And in order that the commissioners may be enabled to determine, who are the proper objects of the benefit intended by the foregoing clause; *Be it further enacted by the authority aforesaid, That no* How tenants to avail themselves of the above provision. *tenant shall be entitled to such benefit, unless he or she shall, within one month after the same shall be required of him or her by the said commissioners, produce to them a certificate to be subscribed by at least twelve reputable inhabitants of the county, of known and undoubted attachment to the American cause, to be approved of by the commissioners, and which inhabitants shall severally declare upon oath, the truth of the matter by them certified, before a justice of the peace of the county who is hereby authorized to administer such oath, certifying, that such tenant hath constantly and uniformly, since the said ninth day of July, one thousand seven hundred and seventy six, demeaned himself or herself, as a friend to the freedom and independence of the United States; and hath, as far forth as his or her circumstances would admit, taken an active and decisive part, to maintain and promote the same.*

XX. *And be it further enacted by the authority aforesaid, That whenever the said commissioners shall, within their respective districts, make sale of any lands, either at public vendue, or upon such appraisement as aforesaid, and the commissioners, and the person or persons to whom such sale shall be made, having reciprocally subscribed a memorandum or note, in writing, of such sale; the commission-* Memorandums in writing to be made of all sales.

ers shall immediately thereupon, give to the person or persons, to whom such sale shall be made, a certificate thereof, to contain the sum for which the lands purchased by such person or persons were sold; and if such sale was made upon such appraisement, then also of the arrearages of rent due on such lands. That the said person or persons to whom such certificates shall be given, shall, within three months from the date thereof, pay into the treasury of this state, the sums in such certificates respectively specified; and the treasurer is hereby required and authorised to receive the same, and to give to the said person or persons paying, duplicate receipts for the monies by them respectively paid; and the several persons to whom such receipts shall be given, shall, upon their respectively producing and lodging with the said commissioners one of the said receipts, be entitled to deeds and conveyances for the lands by them respectively purchased.

XXI. And be it further enacted by the authority aforesaid, That the commissioners for the respective districts shall and may, in their own names, commence and prosecute any suit upon a contract, for the sale of any estate against any person or persons who shall have subscribed such note or memorandum in writing thereof as aforesaid; and all damages which shall be recovered by the said commissioners in such suits, shall be by them paid into the treasury of this state.

XXII. And be it further enacted by the authority aforesaid, That all purchases made at such vendues by the said commissioners, or any or either of them, or by any other person, to or for the use of them, or any or either of them, shall be null and void; and that each commissioner, before he enters upon the execution of his office, shall appear before one of the judges of any of the counties within the district for which such commissioner shall be appointed, and take and subscribe the following oath; which such judge is hereby authorised and required to administer, viz.

Each commissioner to take an oath.

Form of the oath. **I** A. B. appointed a commissioner of forfeitures, for the district, do solemnly and sincerely swear and declare in the presence of Almighty God, that I will faithfully and honestly execute the said office, in such manner as I shall conceive most for the benefit and advantage of the people of this state, according to the true intent and meaning of an act, entitled, "An act for the forfeiture and sale of the estates of persons who have adhered to the enemies of this state, and for declaring the sovereignty of the people of this state, in respect to all property within the same."

XXIII. And be it further enacted by the authority aforesaid, and it is hereby provided, That the said commissioners shall not be authorised to sell any lands, which at the time of the sale thereof, shall be within the power of the enemy, any thing herein before mentioned notwithstanding.

XXIV. And be it further enacted by the authority aforesaid, That the treasurer of this state shall, in his accounts of the monies arising by the sales of forfeited estates, specify the names of the several persons to whom the several estates immediately before the forfeiture thereof were deemed to belong, as the same shall appear from the certificate of the commissioners; To the end, That when the legislature, shall by future act or acts, to be passed for the purpose, provide for the payment of the debts due from the said persons respectively, the amount of the monies arising from the sales of their respective estates, may with the greater ease be ascertained.

Forms of the several
proceedings on this
law.

XXV. *And be it further enacted by the authority aforesaid,* That the forms of the several proceedings to be had in pursuance of this act, and of the deeds or conveyances, to be executed by the commissioners to be appointed in pursuance of this act, shall be as follows, that is to say :

Form of the Notices by the Sheriff.

"State of New-York, ss. By Esq. Sheriff of the County of
WHEREAS at a supreme court of judicature," or "court of
oyer and terminer and general gaol delivery," or "court of
general sessions of the peace," or "court of quarter sessions of the peace
(as the case may be)—(here insert the name or names of the person
or persons indicted, with their respective additions) was" or "were sever-
ally (as the case may be) indicted for adhering to the enemies of the
people of this state. These are therefore to notify the said (here insert the
name of the person indicted) if he" or "she (as the case may be) shall, at the
expiration of the time for that purpose herein after limited, be in full life; and
all persons claiming any estate or interest under him" or "her (as the case
may be) if he" or "she (as the case may be) shall at the expiration of the said
time, be deceased, that unless he" or "she (as the case may be) if in full life
as aforesaid, do personally appear in the supreme court of judicature of this
state, within the time herein after limited, and traverse the said indictment" or
"indictments (as the case may be) or if the said (here insert the name of the
person indicted) shall be deceased; that unless some or one of the said several
persons so claiming an estate or interest as aforesaid, do personally, or if
some coverts, insane, or within age respectively, do by their several and
respective barons, guardians or next friends, respectively, appear in the said
supreme court, on or before the fourth day after the first day of the second
term next succeeding the day of the date of this notice, and traverse the said
indictment" or "indictments (as the case may be) the said (here insert the
name of the person indicted) will be adjudged if in full life, guilty, or if de-
ceased, to have been at the time of his" or "her (as the case may be) death
guilty of the offence" or "offences (as the case may be) charged against him"
or "her (as the case may be) and that all and singular the real and personal
estate, within this state, held or claimed by him" or "her (as the case may
be) if in full life as aforesaid, or which were held or claimed by him" or "her
(as the case may be) at the time of his" or "her (as the case may be) death,
(if deceased as aforesaid,) will be forfeited to the people of this state;" or if
more than one person shall be indicted, then, "These are therefore to notify
such of the said several persons who shall, at the expiration of the time for
that purpose herein after limited, be in full life; and all persons claiming any
estate or interest, under such of the said persons above named, who shall at the
expiration of the said time be deceased; that unless they the said several per-
sons above named, who shall be so in full life, do personally appear in the
supreme court of this state, within the time herein after limited, and traverse
the indictment" or "indictments (as the case may be) against them respec-
tively; and that unless some or one of them the said several persons, claim-
ing any estate or interest as aforesaid, do personally, or if some coverts, insane,
or within age, do by their respective barons, guardians or next friends, ap-
pear in the said supreme court, on or before the fourth day after the first day
of the second term next succeeding the day of the date of this notice, and
traverse the indictment" or "indictments (as the case may be) against the

persons respectively, under whom they respectively so claim; they the said several persons above named, will be adjudged, if in full life, guilty, or if deceased, to have been at the time of their death respectively, guilty of the offence" or "offences (as the case may be) charged against them respectively; and that all and singular the real and personal estate within this state, held or claimed by such of the said persons respectively who shall be in full life as aforesaid, or which were held or claimed at the time of their death respectively, by such of the said persons as shall be deceased, will be forfeited to the people of this state. Given under my hand the day of in the year of the independence of the said state, A. B. Sheriff,"

The Form of a Record where Judgment shall be entered by Default.

"New-York, Supreme Court, ss. Of the Term of (here insert the Term in which Judgment shall be awarded) in the Year of the Independence of this State.

BE it remembered, That on the (here insert the day and year when the indictment was preferred into court) the jurors of the people of this state for the body of the county of (here insert the name of the county where the indictment was taken) did upon their oath present, that (here insert the residue of the indictment, as far as the same shall relate to the person or persons against whom judgment shall be entered) and the said (here insert the name or names of the person or persons charged in the indictment, and against whom judgment is to be entered) having according to the form of the act of the legislature, entitled, "An act for the forfeiture and sale of the estates of persons who have adhered to the enemies of this state, and for declaring the sovereignty of the people of this state, in respect to all property within the same," been notified to appear and traverse the said indictment, and having appeared and traversed within the time, and in the manner, in and by the said act limited and required, it is therefore considered, that the said (here insert the name or names of the person or persons charged in the indictment, and against whom judgment is to be entered) do forfeit," or if more than one person, "severally forfeit all and singular the estate, both real and personal, whether in possession, reversion or remainder, held or claimed by him" or "her" or "them respectively (as the case may be) within this state, to the people of this state."

Form of a Record where a Trial shall be had.

"NEW-YORK, Supreme Court, ss. Of the term (and so on, as in the case of a record where judgment shall be entered by default, to the end of the instrument) and the said (here insert the name of the person who shall appear and traverse) appearing here in court in his own proper person, on the (here insert the day of the month when the person shall appear in court and traverse) in this present term (or if of a preceding term, then) in the term of (here insert the term) in the year of the independence of this state. And saith that he is not guilty of the offence" or "offences (as the case may be) in the said indictment, charged against him" or "her (as the case may be) and of this he" or "she (as the case may be) puts himself" or "herself (as the case may be) upon the country, and who prosecutes for the people of this state in this behalf, in like manner, &c." And so on, as nearly similar as may be, to the form of a record of a trial, at the bar of the supreme court, in a case of felony, without benefit of clergy. That the judgment in case of conviction, shall be the same with the form contained in the form of the record of a judgment by default.

Form of a General Verdict.

AFTER the word oath, "do say that the said (here insert the name of the person charged) is guilty of the several offences charged against him" or "her (as the case may be) or not guilty of the several offences charged against him" or "her (as the case may be) or (if guilty only of certain of the offences charged in the indictment, and not guilty of other, or others of them, then) is not guilty of the offence" or "the several offences (as the case may be) charged in the said indictment to have been committed on (then insert the day and year when the offence or offences (as the case may be) is or are charged to have been committed) but guilty of the offence" or "offences (as the case may be) charged to have been committed on the (here insert the day and year when the offence or offences (as the case may be) of which the person charged in the indictment shall be convicted, were committed.)

The form of the judgment shall be the same with the form of the judgment where judgment shall be entered by default.

Form of the Conveyance from the Commissioners.

THIS indenture, made the _____ Day of _____ in the _____ year of the independence of the state of New-York, and in the _____ year of our Lord _____ between _____ esquires, commissioners of forfeitures, for the _____ district, appointed in pursuance of an act of the legislature of the said state, entitled, "An act for the forfeiture and sale of the estates of persons who have adhered to the enemies of this state, and for declaring the sovereignty of the people of this state, in respect to all property within the same," of the one part, and _____ of the other part; witnesseth, that the said commissioners, by virtue of the power and authority to them, in and by the said act granted, and for, and in consideration of the sum of _____ by the said _____ paid into the treasury of the said state, have granted, bargained, sold, enfeoffed and confirmed; and by these presents do grant, bargain, sell, enfeoff and confirm, unto the said _____ and _____ heirs and assigns, all (here describe the lands or tenements to be conveyed) and all and singular the estate, right, title and interest, whether in possession, reversion, or remainder of, in or to the said premises, which, in consequence of any conviction or attainder, is become forfeited, attached, or vested in, or to the people of the said state. To have and to hold, all and singular the said premises, hereby granted, bargained, sold, enfeoffed and confirmed, with the appurtenances, unto the said _____ and _____ heirs and assigns, to the only proper use and behoof of the said _____ and _____ heirs and assigns for ever. In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written."

Forms of proceedings not hereby particularly prescribed, to be similar to those in cases of felony, without benefit of clergy.

AND that all the forms of proceedings in prosecutions, for the offence aforesaid, to be had in pursuance of this act, other than such as are hereby otherwise specially directed, shall be as nearly as may be, similar to the forms of the proceedings in cases of felony without benefit of clergy, except, that the word or words "offence" or "offences" (as the case may be) shall be used instead of the word or words "felony" or "felonies;" and that where a traverse shall be put in by any person or persons, claiming any estate or interest under a person deceased as aforesaid, all and singular the proceedings and processes, shall, notwithstanding, be of the same form, as if the respective persons, charged in the several indictments, had been severally in full life,

and had in their own respective proper persons, appeared and traversed; and for want of such traverse, as if such person had made default in full life.

Representatives on affidavit of interest, to be admitted to traverse.

XXVI. *And be it further enacted by the authority aforesaid,* That each and every person or persons, claiming an estate or interest under any person deceased, shall and may, upon affidavit of such claim, and of the death of the person, under whom such claim shall be made, to be read and filed in court; be admitted to traverse the indictments against the persons under whom they so respectively claim. That in every case of such traverse as last aforesaid, no trial shall be had thereon, until after the expiration of the time herein before limited for putting in such traverse. That where two or more persons shall appear at one and the same time, and produce such affidavit, and thereupon apply to be admitted to traverse, the court may compel such persons to join in the traverse; and that where any person or persons, so claiming as aforesaid, shall have been admitted to traverse, and shall have traversed accordingly, and any

After traverse any other person applying on affidavit, may be admitted to join in the defence.

other person or persons shall afterwards apply to be admitted to traverse, the person or persons so afterwards applying, having respectively produced such affidavit of a claim as aforesaid, shall upon the trial of such traverse, be permitted to employ counsel, produce witnesses, sue forth subpoenas, for the attendance of witnesses, cross examine the witnesses on the part of the state, and do every other act and thing, in and about a defence, in like manner, and as fully as the person or persons by whom the traverse shall have been put in.

LAWS of the State of NEW-YORK.

Passed in the Third Session of the Legislature, held at in the City of Albany, by Adjournment.

C H A P. XXXVIII.

An ACT to facilitate the Completion of the Articles of Confederation and perpetual Union among the United States of America.

Passed 19th February, 1780.

WHEREAS nothing under Divine Providence, can more effectually contribute to the tranquility and safety of the United States of America, than a federal alliance on such liberal principles as will give satisfaction to its respective members: And whereas the articles of confederation and perpetual union, recommended by the honourable congress of the United States of America, have not proved acceptable to all the states, it having been conceived, that a portion of the waste and uncultivated territory within the limits or claims of certain states, ought to be appropriated, as a common fund for the expences of the war: And the people of this state of New-York, being on all occasions, disposed to manifest their regard for their sister states, and their earnest desire to promote the general interest and security, and more especially to accelerate the federal alliance, by removing, as far as it depends upon them, the before mentioned impediments to its final accomplishment:

I. Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,

That it shall and may be lawful, to and for the delegates of this state, in the honourable congress of the United States of America, or the major part of such of them as shall be assembled in congress; and they the said delegates, or the major part of them, so assembled, are hereby fully authorized and empowered, for and on behalf of this state, and by proper and authentic acts or instruments, to limit and restrict the boundaries of this state in the western parts thereof, by such line or lines, and in such manner and form, as they shall judge to be expedient, either with respect to the jurisdiction, as well as the right or pre-emption of soil; or reserving the jurisdiction in part, or in the whole, over the lands which may be ceded or relinquished, with respect only to the right or pre-emption of the soil.

II. *And be it further enacted by the authority aforesaid,* That the territory which may be ceded or relinquished by virtue of this act, either with respect to the jurisdiction as well as the right or pre-emption of soil, or the right or pre-emption of soil only, shall be, and enure for the use and benefit of such of the United States, as shall become members of the federal alliance of the said states, and for no other use or purpose whatsoever.

III. *And be it further enacted by the authority aforesaid,* That all the lands to be ceded and relinquished by virtue of this act, for the benefit of the United States, with respect to property, but which shall nevertheless remain under the jurisdiction of this state, shall be disposed of and appropriated in such manner only, as the congress of the said States shall direct; and that a warrant, under the authority of congress, for surveying and laying out any part thereof, shall entitle the party, in whose favour it shall issue, to cause the same to be surveyed, and laid out, and returned, according to the directions of such warrant; and thereupon, letters patent under the great seal of this state, shall pass to the grantee for the estate specified in the said warrant; for which no other fee or reward shall be demanded, or received, than such as shall be allowed by congress.

IV. *Provided always, and be it further enacted by the authority aforesaid,* That the trust reposed by virtue of this act, shall not be executed by the delegates of this state, unless, at least, three of the said delegates shall be present in congress.

C H A P. XLVII.

An ACT for raising the Sum of 5,000,000 of Dollars by Tax within this State, and for other Purposes therein mentioned.

Passed 6th March, 1780.

[This act, except the 10th section, is obsolete.]

Lands of persons sent within the enemy's lines, not to be double taxed until further provision.

X. **A**ND in order to remove doubts respecting the taxes charged on lands of persons who have been removed within the enemy's lines; *Be it further enacted by the authority aforesaid, and it is hereby declared,* That until the legislature shall make special provision for collecting the double taxes charged on the lands of persons who have been removed within the enemy's lines in pursuance of the "† Act more effectually to prevent the mischiefs arising from the influence and example of persons of equivocal and suspected characters, in this state," passed the thirtieth day of June, one thousand seven hundred and seventy-eight, no lands shall be assessed at an higher than the usual rate, by reason that such lands may be deemed to belong to persons so removed within the enemy's lines as aforesaid.

† 1st. sess. ch. 47.

LAWS of the State of NEW-YORK,

Passed in the Fourth Session of the legislature, held at the City of Albany, by Adjournment.

C H A P. XXX.

An ACT to alter the Place of holding Elections in the Mohawk District, in the County of Tryon.

Passed 19th March, 1781.

WHEREAS the house assigned by law, for holding the annual town-meetings and elections in the said district, and the other dwellings in the neighbourhood thereof, hath been destroyed by the enemy;

Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the annual town-meetings and elections in the said district shall, in future, be held at the church in the said district, instead of the place heretofore assigned by law for the purpose.

C H A P. XXXII.

*Further provision,
7th. Cell. ch. 63.*

An ACT for raising two Regiments for the Defence of this State, on Bounties of unappropriated Lands.

Passed 20th March, 1781.

Preamble.

WHEREAS the exposed situation of the extensive frontiers of this state, renders it necessary that measures should be adopted for their protection;

I. Be it therefore enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That

Two regiments to be raised for the defence of the frontiers.

two regiments upon the present continental establishment, as to the number of officers and men composing such regiments, be raised for the defence of the frontiers, whenever the congress of the United States shall give assurances, that the regiments aforesaid shall be armed, accoutered, cloathed, subsisted, and paid at the expence of the United States; and that the troops shall continue in service for three years from their respective enlistment, unless sooner discharged.

II. And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the person administering the government for the time being, by and with the advice and consent of the council of appointment, to appoint the officers to such regiments; and as often as vacancies shall happen, to appoint others; That a lieutenant-colonel and a major shall not be commissioned until a number of men equal to two thirds of the regiment, shall be mustered; That it shall be lawful for the person administering the government of this state for the time being, by and with the advice and consent of the council of

Council of appointment, to appoint officers, &c.

appointment, to appoint the commission officers to such regiments, and by and with such advice and consent, to issue warrants, in the first instance, to such and so many persons as captains and subalterns as he shall deem proper and necessary, speedily to enlist the men for the service aforesaid, and under such regulations and restrictions as he shall judge proper: Provided always, That the number of officers so by him warranted as aforesaid, shall not exceed in number the continental establishment.

III. *And be it further enacted by the authority aforesaid,* That it shall be lawful for the person administering the government of the state for the time being, to employ and authorize such and so many warrant officers and others, as he shall deem proper and necessary, to muster and receive persons to be enlisted by virtue of this act; and to give to such persons certificates of their enlistments, thereby to be entitled to the bounty of land intended to be given by this act: That if a sufficient number of men to compose a regiment as aforesaid, shall not be raised on or before the first day of August next, the person administering the government shall be authorized to arrange and form the men then raised, into an independent corps, in such manner as the person administering the government of this state for the time being, shall deem proper; and that if after one regiment is completed, there shall be a number of men enlisted beyond the complement of one regiment, and not sufficient to complete another regiment, they shall be arranged, disposed of, and formed into an independent corps, in the manner before prescribed.

IV. *And be it further enacted by the authority aforesaid,* That the faith of the state be, and is hereby pledged to the officers, non-commissioned officers, and privates, composing such regiments or corps, that the legislature of this state will grant unto such officers who shall be commissioned, and to such non-commissioned officers and privates as shall enlist in the said regiments, and who shall continue to serve during the time aforesaid, or until the time they shall respectively be dismissed or discharged, if such dismissal or discharge shall take place before the end of the said three years; or to the legal representatives of such officers, non-commissioned officers and privates as shall die while in service, the following several quantities of unappropriated lands respectively, to wit: To a lieutenant-colonel and major, each four rights; a captain and surgeon, each three rights; a lieutenant, ensign, and surgeon's mate, each two rights, and each non-commissioned officer and private, one right; and that each right shall consist of five hundred acres: That it shall be lawful for any person entitled to any quantity of lands by virtue of this act, to locate the lands which such person shall elect to be granted him; and that the legislature will, as soon after the expiration of the said term of service as a survey of the said lands can be with safety performed, grant to such person, without fee or reward, or quit-rent reserved, the quantity of lands to which he may be entitled, out of the lands so located: That whenever any number of persons entitled, collectively, to sixty-one rights shall join in a location, the lands so located shall be laid out in a township of seven miles square, and granted to the said persons, according to their respective rights therein; and that in each such township, the remaining right shall be reserved for the support of the gospel, and the remaining three hundred and sixty acres, shall be reserved for the use of a school in such township: That wherever any of the lands to be granted in pursuance of this act, shall be located in quantities less than a township of seven miles square, the person

or persons locating such lands, shall defray the expence of the survey thereof; but if a township shall be located, the state shall be at the expence of running the out-lines of such township: Provided, that no locations shall be made on lands heretofore granted, or on lands belonging to the Oneida and Tuscarora Indians: And provided, That the lands to be granted by each grant, shall be laid out as nearly in a square, as the next adjacent appropriated lands will admit of; That whenever any location shall be made by any person belonging to the said regiments or corps, a description of the lands so located and the person's name by whom, and in whose right such location is made, shall be filed with the surveyor-general of this state for the time being; and the person administering the government of this state for the time being, by and with the advice and consent of the council of appointment, is hereby authorized and required, as soon as may be after the passing of this act, to

Council of appointment to appoint a surveyor-general.

His duty.

appoint a surveyor-general for this state; and if it shall appear to the said surveyor-general, that the lands so located are described with sufficient certainty, that the same have not heretofore been granted, and do not belong to the Oneida and Tuscarora Indians, the surveyor-general shall approve such location, and cause the same to be filed in the secretary's office of this state; and the person making such location shall, immediately after the expiration of his time of service, be entitled to a grant of the lands so located.

V. *And be it further enacted, by the authority aforesaid,* That the said regiments or corps to be raised in pursuance of this act, shall be subject to the

Troops subject to articles of war, and direction of commander in chief.

rules and articles of war, established for the regulation of the army of the United States, and be under the command of the commander in chief of their army: Provided always, That none of the said regiments, or any part or detachment thereof, shall serve out of this state, without the order or consent of the person administering the government of this state for the time being.

Owner of a slave delivered to serve in the said troops, entitled to a grant of one right, and discharged from maintaining such slave.

VI. *And be it further enacted by the authority aforesaid,* That any person who shall deliver one or more of his or her able-bodied male slaves, to any warrant officer as aforesaid, to serve in either of the said regiments or independent corps, and produce a certificate thereof, signed by any officer or person authorized to muster and receive the men, to be

raised by virtue of this act, and produce such certificate to the surveyor general, shall, for every male slave so entered or mustered as aforesaid, be entitled to the location and grant of one right, in manner as in and by this act is directed; and shall be, and hereby is discharged from any future maintenance of such slave; any law to the contrary notwithstanding; and such slave, so entered as aforesaid, who shall serve for the term of three years, or until regularly discharged, shall, immediately after such service or discharge, be, and is hereby declared to be a free man of this state.

VII. *And to encourage as far as possible, the speedy completing of the said regiments; Be it further enacted by the authority aforesaid,* That every

Any person furnishing a man, may take a transfer of his right.

person who shall engage any able-bodied man, to enter into either of the said two regiments, to serve for the term of three years, shall and may take a transfer of the right of such man's right to the bounty of lands intended to be given by this act; and on producing to the surveyor-general a certificate signed by any officer or person authorized to muster and receive the men to be raised by virtue of this

act, shall and may locate, and be entitled to receive a grant for the same, as if such person had actually entered, and served in either of the said regiments for the term aforesaid: Provided always, That the person receiving such grant shall, either by himself or some other person on his behalf, make an actual settlement on, and improve such lands, within three years next after the conclusion of the war, or that the same shall be deemed as forfeited, and revert to the use of this state.

VIII. *And be it further enacted by the authority aforesaid,* That the said lands hereby directed to be granted to the said officers, non-commissioned officers and privates, shall be deemed and construed to be in lieu of all and every bounty, allowance of half pay, or emolument whatsoever, on the part of this state. That the levies to be raised in pursuance of this act, shall be mustered by such person, and in such manner, as congress, or the commander in chief of the army of the United States, shall direct.

C H A P. XXXIII.

An ACT to enable the Person administering the Government to exchange Persons applying for that Purpose, as Prisoners of War, for the Subjects of this State, Prisoners of War with the Enemy.

Passed 20th March, 1781.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That it shall and may be lawful for the person administering the government for the time being, as often as he shall deem it expedient to exchange any inhabitant of this state whom he shall judge a proper object of such exchange, and upon the application of such inhabitant, as a prisoner of war, for any person or persons subjects of this state, prisoners of war with the enemy, in like manner as if such inhabitant applying for such exchange, was a subject of the king of Great-Britain, and had been made a prisoner when in arms against this state: That every such application shall be made in writing: and if the person administering the government shall consent thereto, and approve thereof, he shall certify such consent and approbation, by an endorsement on the writing containing such application, and shall cause the said application and certificate to be filed in the secretary's office of this state, there to be recorded; and the said inhabitant so applying, shall, from and immediately after the date of such certificate, be, and is hereby declared to be, and shall be deemed and treated as a prisoner of war to this state, and a subject of the king of Great-Britain; and all and singular the real estate held or claimed within this state, by such person, on the day of the date of the said certificate, shall be, and hereby is declared to be forfeited to, and vested in the people of this state.

The governor upon application to exchange any inhabitant as a prisoner of war.

The person applying to be treated as a prisoner of war.

And his real estate forfeited.

LAWS of the State of NEW-YORK.

Passed in the Fifth Session of the Legislature, held at Poughkeepsie, in Dutchess County,

C H A P. IV.

An ACT to remedy the Mistakes and Defects in the Proceedings for Conviction of Persons who have adhered to the Enemy, grounded on an Act, entitled, 1 An Act for Forfeiture and Sale of the Estates of Persons who have adhered to the Enemies of this State, and for declaring the Sovereignty of the People of this State, in respect to all Property within the same.

Passed 13th November, 1781.

Preamble.

WHEREAS divers errors, misprisions, deviations from the forms prescribed by the said act, misdescriptions of justices before whom the indictments were taken, and divers incertainties as to the times of charging the facts in several of the indictments, grounded on the said act, have taken place in many cases, as well in the indictments as in the sheriff's notices, grounded thereon; and also divers mistakes have been made in not returning into the supreme court of judicature of this state, the examinations whereon some of the said indictments have been found: And whereas public justice requires, that in all such cases as aforesaid, as well those in which judgment has been rendered, as those in which judgments still remain to be rendered, all such mistakes, defects and deviations, from the requisites of the said act, should be remedied:

I. Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,

Errors remedied.

That all such errors, misprisions, misdescriptions and deviations; and also all such incertainties as aforesaid, as to the times of charging the facts in any of the said indictments, and in the sheriff's notices thereon, be, and each and every of them are hereby fully and absolutely remedied; and that the proceedings in all such cases respectively, shall be deemed as effectual in the law, to all intents, constructions and purposes whatsoever, as if the said act had been fully and strictly pursued in every instance and particular in such proceedings; and as if no such errors, misprisions, misdescriptions, or deviations in any of the said proceedings had taken place.

Preamble as to the Act of Albany.

II. And whereas doubts have arisen, whether between the first day of April last, and the twenty-ninth day of September last, Henry I. Wendell or John Ten Broeck, was the lawful sheriff of the county of Albany, the said persons having both officiated in the said office between the said days; and the said Henry I. Wendell having published all the notices on such indictments aforesaid, as have been found in the county of Albany: In order therefore to remove all doubts with respect to such notices as last aforesaid, the same, and each and every of them are hereby enacted and declared to have been duly published to all intents, constructions, and purposes in the law whatsoever, as if he was, during the time aforesaid, lawful sheriff of the said county.

Notices by Henry I. Wendell, declared to be duly published.

C H A P. IX.

An ACT declaring the Rates at which French Crowns and Guineas shall be received in Payment of Taxes, and other Public Monies due to this State: and making it Felony to counterfeit any Silver French Coins.

Passed 20th November, 1781.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That it shall be lawful for the treasurer of this state, and all other public officers concerned in the receipt of taxes, or other public monies on account of this state, to receive in payment of such taxes or other public monies, the silver coins commonly called French crowns, at the rate of nine shillings lawful money of this state, for each crown, and the gold coins commonly called French guineas, weighing five penny-weight and four grains, at the rate of thirty-six shillings and four-pence, of like money, for each guinea.

French crowns, at
9s. each, and
French guineas at
36s. 4d. each.

[The remaining part of this act, concerning counterfeiting, is repealed, 11th sess. ch. 20. sec. 5.]

LAWS of the State of NEW-YORK.

Passed in the Fifth Session of the Legislature, held at Poughkeepsie, in Dutchess County, by Adjournment.

C H A P. XXI.

Continued and amended 7th sess. ch. 14. 9th sess. ch. 20.

An ACT for the Appointment of an Auditor, and the Settlement of the public Accounts of this State.

Passed 23d March, 1782.

WHEREAS Comfort Sands, Esquire, auditor-general of this state, hath, by his letter to the legislature, made his resignation of the said office:

I. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the said resignation of Comfort Sands, Esq. be, and is hereby accepted.*

II. And whereas it is necessary that the office of an auditor should be established in this state, to exist for and during the time by this act appointed; *Be it therefore enacted by the authority aforesaid, That the office of an auditor, to settle and adjust the public accounts of this state, shall be and is hereby established, and shall and may exist within this state, for the term of two years from and after the passing of this act.*

III. *And be it further enacted by the authority aforesaid, That it shall be lawful for the person administering the government of this state for the time being, by and with the advice and consent of the council of appointment, and he is hereby required, forthwith after the passing of this act, to nominate and appoint an auditor*

The council of appointment to appoint an auditor.

for this state; and that it shall be the duty of the said auditor to audit, liquidate and settle all accounts now subsisting, or which hereafter may arise, subsist, or be between this state and any person or persons acting, or having acted under the authority of the same, or between this state and every other person or persons whatsoever: And also to state all accounts heretofore subsisting and now depending, or hereafter to subsist or depend, between this state and the United States of America.

IV. And whereas it is indispensably necessary, that the accounts of this state with the said United States, should be stated as speedily as possible; *Be it therefore further enacted by the authority aforesaid, That* the said auditor shall, with all convenient speed, proceed to state the accounts of this state with the United States, in such manner, and on such principles as shall from time to time be directed by the legislature.

V. *And be it further enacted by the authority aforesaid, That* the said auditor be, and he is hereby authorized to require from such persons who were formerly, are now, or hereafter shall be officers, either civil or military, in the service of this state, such returns, abstracts or accounts, or vouchers by them officially taken or received, or in possession of such officers, as shall be necessary to enable the said auditor to settle and state the said accounts, or any of them; and to require any persons who have received any monies for which they are, or hereafter may become accountable to this state, to account with him for the expenditures of such monies by such persons respectively received; and such persons are hereby respectively required, on the requisition of the said auditor, to make such returns, and deliver such abstracts or vouchers as aforesaid, and to account with the said auditor with all convenient speed.

VI. *And be it further enacted by the authority aforesaid, That* it shall and may be lawful for such auditor to employ such clerk or clerks, and at such wages as he shall from time to time judge necessary, and most beneficial to the state, to be paid by the treasurer of this state, out of any monies which shall be in his hands unappropriated, on the certificates of the said auditor; and that the said treasurer shall be, and he is hereby authorized to pay to the said auditor, such sum or sums (not exceeding, in the whole, the sum of one hundred pounds) as the said auditor shall from time to time require, to defray the expence of office hire, and other incidental charges, which he may be put to in discharging the duties of his said office.

VII. *And be it further enacted by the authority aforesaid, That* the said auditor shall be allowed for his services in that station, for the year next ensuing the time of his taking the oath of office, at and after the rate of two hundred and fifty pounds, in specie, per annum.

VIII. *And be it further enacted by the authority aforesaid, That* the said auditor shall from time to time make report to the legislature, of the progress he shall have made, and of any difficulties or impediments which he may meet with in the execution of the duties prescribed to him, in and by this act.

IX. *And be it further enacted by the authority aforesaid, That* all the powers and authority vested in the auditor-general of this state, by virtue of any act for the recovery of debts due to, and the settlement of accounts with this state,

or for any other purpose whatsoever, shall and may be exercised by the auditor of this state, hereafter to be appointed in pursuance of this act.

X. *And be it further enacted by the authority aforesaid,* That the treasurer of this state, shall pay any demands on account due from this state, and audited by the auditor to be appointed by this act, in like manner as by law he was heretofore directed to pay such debts, audited by the auditor-general of the state.

C H A P. XXII.

An ACT for raising Troops to complete the Line of this State, in the Service of the United States, and the two Regiments to be raised on Bounties of unappropriated Lands, and for the further Defence of the Frontiers of this State.

Passed 23d March, 1782.

Preamble.
 † 5th. sess. ch. 8. **W**HEREAS by a law of this state, passed on the 17th day of November, 1781, entitled, — An act for the further defence of the frontiers of this state; the person administering the government of this state for the time being, was authorised to direct the raising of fifteen hundred men, in the manner in the said law directed, to serve to the first day of January, in the year of our Lord one thousand seven hundred and eighty-three: And whereas there is a deficiency in the three regiments of this state, serving in the army of the United States; and it is necessary to complete the said regiments to their full establishment;

1. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That every class within the limits of every regiment of militia in this state, which may, by virtue of the before recited law, be required to furnish a man to serve to the first day of January, one thousand seven hundred and eighty-three, and which shall engage such man, being able bodied, to serve for the term of three years, or during the war, in any of the said three regiments, and shall obtain a certificate of the delivery of such man to any person authorised to receive the same, by the person administering the government of this state for the time being, such class shall be entitled to a gratuity of six hundred acres of land, out of the unappropriated lands belonging to this state, in like manner as by the seventh section of an act, entitled, † An act for raising two regiments for the defence of this state, on bounties of unappropriated lands, passed March 20th, 1781, persons were entitled to such lands who should engage an able-bodied man to enter into either of the said

Every class procuring men to serve three years, are entitled to 600 acres of land.

‡ 4th sess. ch. 21. *And for two years* two regiments; and that every class who shall so deliver an able-bodied man to serve for the time of two years, in either of the said two regiments, shall, in like manner as aforesaid, be entitled to a gratuity of three hundred and fifty acres of land as aforesaid.

[The rest of this act, except the 3d, 4th, 5th, 6th and 8th clauses, is obsolete.]

III. And whereas the inhabitants of this state, are so greatly distressed for the want of specie, that it is become indispensably necessary that further aid should be afforded them to raise such of the said fifteen hundred men as may not enter into any of the regiments aforesaid; *Be it therefore enacted by the authority aforesaid,* That every class which shall before the expiration of

Lands granted as an encouragement to classes raising men.

twenty days next after such class shall be notified and directed to raise a man, deliver the man to be furnished thereby, in manner aforesaid, shall be entitled to a gratuity of two hundred acres of land, out of the unappropriated lands belonging to this state, in like manner as classes delivering a man to serve in any of the said regiments, are entitled to.

IV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for any class, or the major part thereof, to grant or transfer for the benefit of the whole, the whole right of such class to any lands it may become entitled to by this act, to the person whom the class shall engage to serve in any of the corps aforesaid, or to any other person or persons whatsoever, whether of the class or not, and to the heirs and assigns of such person or persons; and such grant or transfer being made in writing, and acknowledged or proved by the oaths of one or more of the witnesses to such grant or transfer, before any one of the judges of the supreme court, or before any one of the judges of the inferior court of common pleas, shall be a sufficient voucher whereby the person or persons to whom such grant or transfer is made, may locate and be entitled to receive a grant for such lands, in manner directed in and by the said Act for raising two regiments for the defence of this state, on bounties of unappropriated lands, passed March 20th, 1781.

V. *And whereas several of the persons to whom warrants were issued in pursuance of the act for raising of the said two regiments for the defence of this state, on bounties of unappropriated lands, have not within the time limited, inlisted the requisite number of men, in order to entitle themselves to commissions, and have notwithstanding hitherto continued to inlist men for the said regiments; and it hath been suggested that if a farther day was granted for the purpose, they would complete their inlistments; Be it therefore enacted by the authority aforesaid,* That each and every person to whom

Further time given to raise men on bounties of said lands.

a warrant hath been, or shall hereafter be granted, who shall enlist, and cause to be mustered into the said regiments, on or before the first day of June next, such number of men for the said regiments, as the person administering the government hath assigned or appointed, or shall assign or appoint, such persons shall respectively be entitled to, and receive commissions in the said regiments, and be entitled to, and receive the bounties by the said act to be granted, in like manner as if they had respectively inlisted the requisite number of men, within the time by the said act limited. But if such officers so appointed, or to be appointed, should not raise the men by the time last above limited, that then and in such case, it shall and may be lawful for the person administering the government of this state for the time being, by and with the advice and consent of the council of appointment, to issue his warrant to such of the officers of the levies as he shall approve, to recruit for the said two regiments, or the corps which may be formed out of the same; which officers, upon raising the number of men assigned, on or before the first day of January next, shall be entitled to commissions, and the bounty in lands agreeable thereto: Provided always, That if any of the said levies should be inlisted, they shall continue to serve for the term of two years from the said first day of January next.

VI. *And be it further enacted by the authority aforesaid,* That every person already inlisted, since the first day of August last, or that shall inlist on or before the first day of June next, and who shall continue to serve for the term

of two years, to be computed from the day on which such person shall be mustered, or who shall be enlisted as aforesaid, after the first day of June, by such officers of the levies as shall be appointed as aforesaid to recruit, to serve from the first day of January next, and delivered to such person or persons, as the person administering the government of this state for the time being, hath appointed, or shall appoint, to muster and receive the men for the said two regiments, shall be entitled to the bounty of five hundred acres of unappropriated land, in the manner as in and by the said act passed the 20th March, 1781, persons enlisting before the said first day of August, are entitled to. That the person appointed, or hereafter to be appointed to muster the said two regiments, shall be allowed at and after the rate of twelve shillings per day, for every day he shall be actually employed in the said service, agreeable to such account thereof as he shall produce, audited by the auditor for this state.

VIII. And in order more effectually to complete the said three regiments with permanent troops, *Be it further enacted by the authority aforesaid,* That every person who shall engage and deliver as aforesaid, an able-bodied man to serve for the term of three years or during the war, in any of the said three regiments, shall be entitled to, and receive a gratuity of six hundred acres of unappropriated land, in manner as by the seventh section of the said act, passed on the 20th March, 1781 is directed; and that every person who shall so engage,

and deliver an able-bodied man to serve in either of the said two regiments, for the term of two years, shall be in like manner entitled to, and receive a gratuity of five hundred acres of unappropriated lands. That whenever any persons entitled to lands by virtue of this act, shall associate in a sufficient number to take a whole township of seven miles square, the same shall be laid out in manner directed by the said act, passed the 20th of March, 1781; and each person's lot shall contain the quantity of acres such person may be entitled to by virtue of this act. Provided always, That in every such township, there

shall be laid out, one lot containing four hundred acres, for the support of the gospel; and two other lots containing each two hundred acres, for the use of schools; and if any number of acres less than the least right, shall remain, they shall in like manner be appropriated to the use of schools.

C H A P. XXXI.

An ACT to stay certain Proceedings at Law against the late Commissioners of Sequestration, in Ulster County.

Passed 8th April, 1782.

WHEREAS it appears to the legislature, by sufficient evidence, that Benjamin Smith, of Newburg, in the county of Ulster, was apprehended when attempting to join the enemy; and that his effects were seized and sold by the late commissioners of sequestration in the said county, who are now threatened, by the said Benjamin Smith, with a suit for supposed damages by him sustained;

1. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the Authority of the same, That it shall*

The commissioners of the said Benjamin Smith, or any person in his behalf, to commence or prosecute any suit or action against the said late commissioners of the said county or either of them, for or on account of any seizure or sale by them made of his effects, as aforesaid; any law to the contrary notwithstanding.

II. And be it further enacted by the authority aforesaid, That the sale of the personal estate of the said Benjamin Smith, made as aforesaid, by the said commissioners, is hereby declared to be good and valid in law.

C H A P. XXXV.

An ACT to prevent the Establishment of any Bank within this State other than the Bank of North America, and for incorporating the same within this State.

Passed 11th April, 1782.

WHEREAS the United States in congress assembled, did, on the 26th day of May, 1781, resolve in the words following, viz.

“That congress do approve of the plan for establishing a national bank in these United States, submitted to their consideration by Mr. Robert Morris, the 17th Day of May, 1781; and that they will promote and support the same by such ways and means, from time to time, as may appear necessary for the institution, and consistent with the public good. That the subscribers to the said bank shall be incorporated agreeably to the principles and terms of the plan, under the name of, The president, directors, and company of the bank of North America, as soon as the subscription shall be filled, the directors and president chosen, and application for that purpose made to congress, by the president and directors elected.

“Resolved, that it be recommended to the several states, by proper laws for that purpose, to provide, that no other bank or bankers shall be established or permitted within the said States respectively during the war. That the notes hereafter to be issued by the said bank, payable on demand, shall be receivable in payment of all taxes, duties and debts due, or that may become due or payable to the United States.

“Resolved, That congress will recommend to the several legislatures to pass laws, making it felony without benefit of clergy, for any person to counterfeit bank notes, or to pass such notes knowing them to be counterfeit; also making it felony without benefit of clergy, for any president, inspector, director, officer, or servant of the bank, to convert any of the property, money, or credit of the said bank, to his own use, or in any other way, to be guilty of fraud or embezzlement as an officer or servant of the bank.”

And whereas the congress of the United States did, on the thirty-first day of December, 1781, pass an ordinance to incorporate the subscribers to the bank of North America, in the words following, viz.

“Whereas congress, on the twenty-sixth day of May last, did, from conviction of the support which the finances of the United States would receive from the establishment of a national bank, approve a plan for such institution, submitted to their consideration by Robert Morris, Esq. and now lodged among the archives of congress, and did engage to promote the same by the most effectual means; and whereas the subscription thereto is now filled from an expectation of a charter of incorporation from congress

the directors and president are chosen, and application hath been made to congress by the said president and directors for an act of incorporation; And whereas the exigences of the United States render it indispensably necessary, that such an act be immediately passed;

"Be it therefore ordained, and it is hereby ordained by the United States in Congress assembled, That those who are, and those who shall become subscribers to the said bank, be, and forever after shall be a corporation and body politic, to all intents and purposes, by the name and stile of, The president, directors, and company of the bank of North-America,

To hold property to the amount of ten millions of dollars, and no more.

"And be it further ordained, That the said corporation are hereby declared and made able and capable in law, to have, purchase, receive, possess, enjoy and retain lands, rents, tenements, hereditaments, goods, chattels and effects, of what kind, nature, or quality soever, to the amount of ten millions of Spanish silver milled dollars, and no more; and also to sell, grant, demise, alien, or dispose of the same lands, rents, tenements, hereditaments, goods, chattels and effects.

To sue and be sued.

"And be it further ordained, That the said corporation be, and shall be forever hereafter able and capable in law, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended in courts of record, or any other place whatsoever; and to do and execute all and singular other matters and things, that to them shall or may appertain to do.

To choose their own officers.

"And be it further ordained, That for the well-governing the said corporation, and the ordering of their affairs, they shall have such officers as they shall hereafter direct or appoint: Provided nevertheless, That twelve directors, one of whom shall be the president of the corporation, be of the number of their officers.

The present president and directors.

"And be it further ordained, That Thomas Willing be the present president; and that the said Thomas Willing, and Thomas Fitzsimons, John Maxwell Nesbit, James Willson, Henry Hill, Samuel Osgood, Cadwallader Morris, Andrew Caldwell, Samuel Inglis, Samuel Meredith, William Bingham and Timothy Matlack, be the present directors of the said corporation, and shall so continue until another president and other directors shall be chosen, according to the laws and regulations of the said corporation.

To exercise powers for ordering their affairs.

"And be it further ordained, That the president and directors of the said corporation, shall be capable of exercising such power, for the well governing and ordering of the affairs of the said corporation, and of holding such occasional meetings for that purpose, as shall be described, fixed, and determined by the laws, regulation, and ordinances of the said corporation.

To make laws for their government.

"And be it further ordained, That the said corporation may make, ordain, establish, and put in execution such laws, ordinances and regulations, as shall seem necessary and convenient to the government of the said corporation: Provided always, That nothing herein before contained, shall be construed to authorize the said corporation, to exercise any powers in any of the United States repugnant to the laws or constitution of such state.

To have a common seal.

And be it further ordained, That the said corporation shall have full power and authority, to make, have, and use a common seal, with such device and inscription as they shall think proper, and the same to break, alter and renew at their pleasure.

And be it further ordained, That this ordinance shall be construed and taken most favourably and beneficial for the said corporation."

And whereas the United States in congress assembled, did, on the 31st day of December, 1787: resolve, that it be recommended to the legislature of each state, to pass such laws as they may judge necessary for giving the foregoing ordinance its full operation, agreeably to the true intent and meaning thereof, and according to the recommendations contained in the resolutions of the 26th May last;

I. Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the Authority of the same,

That the said bank mentioned in the said ordinance, shall be, and is hereby incorporated and made a body politic within this state, by the name and stile of, The president, directors, and company of the bank of North-America, with all and singular the powers, privileges, and immunities in the said ordinance specified; and

that no other bank, public or private, shall be established within this state, during the present war with Great Britain

on pain of the forfeiture of one hundred pounds for every offence, by every person concerned in such bank or banks, being thereof convicted in the supreme court of judicature of this state; which forfeiture shall go one half to the complainant, and the other half to the treasury of this state.

And no other bank to be established during the present war.

II. And be it further enacted by the authority aforesaid,

That if any person shall forge or counterfeit any bank note or notes, issued or emitted, or to be issued or emitted by the said bank hereby incorporated, or shall alter any such bank note, so that the same shall appear to be of greater value than the same was at the time of the issuing or emitting thereof, intended to pass for; or shall pass or give in payment, or procure to be passed or given in payment, any such counterfeit or altered bill, knowing the same to be counterfeit or altered;

the person so offending, shall be deemed guilty of felony, and shall, on conviction, suffer the pains, penalties and forfeitures, prescribed by law in cases of felony without benefit of clergy,

III. And be it further enacted by the authority aforesaid,

That if any president, inspector, director, or servant of the said bank, shall fraudulently convert any of the property, money, or credit of the said bank, to his own use, he shall be deemed guilty of felony; and shall, on conviction, suffer the pains, penalties, and forfeitures prescribed by law in cases of felony, without benefit of clergy:

Provided always, and it is further enacted, That nothing in this act contained, shall be construed to imply any right or power in the United States in congress assembled, to create bodies politic, or grant letters of incorporation in any case whatsoever.

Or for any of their officers or servants to convert any property of the bank to their own use.

This act not to imply any right in congress to create bodies politic.

This act not to imply any right in congress to create bodies politic.

LAWS of the State of NEW-YORK,

Passed in the Sixth Session of the Legislature, held at Poughkeepsie, in Dutchess County.

C H A P. I.

Explained and amended 8th sess. ch. 12.
10th sess. ch. 94.

An ACT relative to Debts due to Persons within the Enemy's Lines.

Became a law 12th July, 1782.

WHEREAS many of the inhabitants of this state, who have not remained within the enemy's power, and who were indebted to others who did so remain, are now threatened with suits, and have it not in their power to recover from those who are indebted to them, and remained within the power of the enemy:

I. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That all suits and prosecutions for any debt, arising on simple contract, bills single or penal, or any other obligation, mortgage, security or demand whatsoever, due by or from any person not within the enemy's power or lines. * *to any person that has remained with, gone into, or has in consequence of any law of this state, been sent within the enemy's power or lines, already commenced, or which hereafter be commenced, shall be stayed until the legislature shall make further † provision in the premises, any law to the contrary notwithstanding.*

† See 7th sess. ch. 54.
sec. 6.

Preamble.
Reciting the justice of giving relief to certain debtors.

II. And whereas it is also just and reasonable, that provision should be made for the relief of such citizens of this state, who, having received in payment of debts due to them, paper currency, which at the time of such payment, was a legal tender, and which they might of right have paid in discharge of any debts due by them, but which it was not in their power to pay to such of their creditors as have remained with, gone into, or were so sent within the enemy's lines; and which money has, since the receipt thereof, depreciated in their hands: And whereas it is impossible to apply one general rule, to all the variety of cases, which do or may arise; *Be it therefore further enacted by the authority aforesaid,* That in every suit or prosecution which shall be commenced after the legislature shall by law have declared, that the necessity of staying such suits or prosecutions as aforesaid, does no longer exist, by any person who may have remained with the enemy, gone in to them, sent or to be sent as aforesaid unto them, against any person who has remained without the power of the enemy, it shall and may be lawful for the court in which such suit shall be commenced or prosecuted, and the court is hereby required, on motion of the defendant or his attorney, to appoint three or five referees, at the option of the court, to try the matter in controversy; and the defendant shall, and here-

* Not in the original, but inserted by virtue of an act passed 4th of May, 1784, 10th sess. ch. 54. Sec. 7.

by is allowed to plead before such referees, any special matter; and if it shall appear to the said referees, or the major part of them, that the special matter alledged and proved by the defendant, is of such a nature, that in equity and good conscience, abatement ought to be made from any sum or sums, due by such defendant, the referees shall, by majority of voices, determine the quantum of such abatement; and having made their report and award, in writing, shall return the same into court; and the court shall thereupon give judgment, and order execution to issue in favour of the plaintiff, for the sum so awarded to be due to the plaintiff: *Provided*, That such execution shall not be levied until the expiration of three years, next after the enemy shall be expelled from, or shall have abandoned the city of New-York.

III. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for every defendant; to pay in discharge of any debts so found due as aforesaid, to such plaintiff as aforesaid, certificates or notes signed by any commissioner of loans of the United States, according to the value thereof as settled by the continental scale of depreciation, or certificates for money due on loan by this state, according to the value thereof, ascertained by law.

IV. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for any person, now without the power of the enemy, being a debtor to any person now within the power of the enemy, at any time after the enemy shall be expelled from, or shall have abandoned the city of New-York, and that the legislature shall have by law, declared that such suits as aforesaid shall be no longer stayed, to cite his creditors before any court of law in this state, to have a settlement, and make payment agreeable to the mode prescribed by this act; and if the creditors shall refuse to appear and come to trial, within two terms next after such citation, he shall be, and hereby is declared to be barred and precluded from recovering his said debt, due or demand, or any part thereof.

V. *Be it further enacted by the authority aforesaid*, That any subject or subjects of this state, not in the power or lines of the enemy, who are indebted by simple contract, bill, single or penal, or any other obligation, mortgage, security or demand whatsoever, to any person or persons that have either remained with, gone into, or have in consequence of any law of this state, been sent within the enemy's power or lines, for such subjects of this state, not in the power or lines of the enemy, so indebted, shall be, and hereby are discharged from any interest which may have become due on such contract, bill, obligation, mortgage or securities, since the first day of January, one thousand seven hundred and seventy-six, to the first day of January, which shall follow next after the conclusion of the present war; any law, usage or custom, to the contrary notwithstanding: *Provided*, That nothing in this clause contained, shall be deemed to operate a discharge of any interest which may have accrued on any such bill, obligation, mortgage, or other security, executed since the said first day of January, one thousand seven hundred and seventy-six: *Provided* nevertheless, That no person or persons shall be allowed the benefit of this act, unless he, she or they shall first have taken the oath of abjuration, and the oath of allegiance to this state, and shall obtain a certificate signed by twelve reputable and well-affected freeholders

Certain certificates payable in discharge of certain debts.

When certain debts may be cited their creditors before any court to have a settlement.

Creditors refusing to appear, barred from recovering their debts.

Debts from subjects without the power of the enemy, &c.

Debts contracted since the 10 January 1776, not discharged from interest.

What persons are allowed the benefit of this act.

of this state, one whereof shall be a judge of the inferior court of common pleas of the county in which the person named in such certificate shall reside, certifying that he or she is well attached to the freedom and independence of the United States of America, and have taken an active and decided part therein: And provided farther, That this act shall not extend to any debt or debts, contracted or made, or hereafter to be made, for the use of the state, for the payment of which the faith thereof is pledged: And also provided further, That nothing in this act contained, shall be construed to extend to any person that heretofore hath been, now is, or hereafter shall be a prisoner with the enemy.

See 12th sess. ch. 49.
Explained 7th sess. ch. 54. sec. 8.

CHAPTER XI.

An ACT to prevent Grants or Locations of the Lands therein mentioned.

Passed 25th July, 1782.

Preamble.

WHEREAS congress have, by several of their acts, declared, that certain quantities of land should, at the termination of the present war with Great-Britain, be granted to the persons respectively described in such acts, officers and soldiers in the army of the United States: And whereas the legislature of this state are inclined to make provision to carry into effect the said acts of congress at a future day, so far as they respect officers and soldiers in the army of the United States, who have a right to such grants from this state:

1. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That all the lands, situate, lying and being in the county of Tryon, bounded on the north by lake Ontario, the Onondago river, and the Oneida lake; on the west by a line drawn from

the mouth of the Great Sodus or Asforodus creek, through the most westerly inclination of the Seneca lake; on the south by an east and west line drawn through the most southerly inclination of the Seneca lake; and on the east by a line drawn from the most westerly boundary of the Oneida or Tuscarora country, on the Oneida lake, through the most westerly inclination of the west bounds of the Oneida or Tuscarora country; shall be,

and the same is hereby declared to be set apart, and assigned for the purpose of making grants to major-generals and brigadier-generals, who at the time of their entering into the service, were inhabitants of this state, and to the troops of this state, serving in the army of the United States, and their legal representatives, agreeable to any acts of congress heretofore published and declared, or any law or laws hereafter to be passed by the legislature of this state; and to such other persons as the legislature may hereafter deem it necessary to provide for, by gratuities in land, on account of their military services in the army of the United States. And the surveyor-general for the time being, shall be, and he is

hereby strictly inhibited from receiving and accepting of any locations on any part of the lands so set apart, except for certificates lodged in his office, before the passing of this act; and excepting out of the said tract so set apart, a certain tract of land within the bounds following, to wit: Beginning at the mouth of a brook or small river which empties into the east side of the river proceeding

Surveyor-general inhibited from accepting locations on the said lands, except for certain certificates, Sec.

Repealed 9th sess. ch. 67. sec. 36. See 11th sess. ch. 89. Sec. 4. and 12th sess. ch. 44.

Certain lands set apart for the use of the troops.

from the Cayuga lake, being known by the name of Teyagokaryen, and running thence southerly along the north-easterly bank thereof, to a ford at the north end of the pond or lake, called and known by the name of Wasko; thence south-west to the Cayuga lake; thence northerly along the bank of said lake to Teyagokaryen, the stream first above-mentioned: And the surveyor-general is hereby also strictly inhibited from receiving and accepting of any locations on any part of the lands contained in the tract last described.

To receive locations for lands equal to two townships of seven miles square each.

Repealed 9th sess. ch. 67, sec. 35.

II. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for the surveyor-general to receive locations in that part of the tract by this act set apart, for the use of the troops of this state, serving in the army of the United States, for a quantity of land equivalent to two townships of seven miles square each, in that part of the tract so set apart, which lies between the Seneca and Cayuga lakes, and adjoining to any locations heretofore made.

To refuse certificates for lands located under certain circumstances.

Repealed 9th sess. ch. 67, sec. 36. See 11th sess. ch. 89, sec. 2.

III. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful to and for the surveyor-general, and he is hereby required to refuse certificates to any person or persons, who already have, or hereafter shall locate any lands, which, at the time of such location, were actually occupied and possessed by any person or persons, subjects of this state: or which have been in the actual possession and improvement of any person or persons, subjects of this state, since the commencement of the present war with Great-Britain; or which were heretofore, when this state was a colony, reserved and applied for public uses; any thing in any law of this state, to the contrary notwithstanding: Provided always, That

Proviso.
Allowing surveyor-general to pass certificates for any lands of the six nations of Indians, the Oneida and Tuscaroras excepted.

Proviso, in favour of certain prior locations, with an exception.

nothing in this clause contained, shall be taken or deemed to inhibit the said surveyor-general, from passing certificates for any lands located, or to be located; and which now are, or heretofore were possessed and occupied by any of the Six Nations of Indians, the Oneida and Tuscaroras excepted: Provided also, That the surveyor-general shall not refuse any certificates to persons who have located lands, which they were authorized by law to locate, and which they themselves occupy and possess, except for such lands before mentioned, which were heretofore reserved and applied for public uses.

Preamble.
Setting forth fears and uneasiness in King's district, with the cause thereof.

IV. And whereas it has been represented to the legislature, that fears and uneasiness prevail among the inhabitants of King's district, in the county of Albany, by reason of suggestions and pretences by other persons, that the whole or part of the lands comprised within the said district, are still vacant, as having never been granted: For removing such fears and uneasiness, *Be it enacted by the authority aforesaid*, That the estate, right, title, or interest of any person or persons, of, in, or to any lands within the said district, and not within any grant or patent, made or issued under the great seal of this state, while the same, as the colony of New-York, was subject to the crown of Great-Britain, shall not in any wise be impeached, questioned or injured, by reason or colour that such lands were not heretofore in due form of law, granted in fee simple by the government of this state, while the same was a colony of New-York; or since the declaration of the independence thereof.

See 14th sess. ch. 42, sec. 11.

V. And whereas the wardens and vestry of the two churches at the High-Lands and Peek's-Kill, with sundry inhabitants of Cortlandt's Manor, by their memorial presented to the legislature of this state, represented, That in the year one thousand seven hundred and seventy-two, Beverly Robinson and Susannah, his wife, tendered to convey to the said wardens and vestry, the farm then in possession of Ebenezer Jones, near Continental Village, containing two hundred acres, for the purpose of a parsonage and glebe: That the memorialists, in consequence of such tender, purchased the improvements of the said Ebenezer Jones, and proceeded to build the house now on said farm, called the Yellow-House; that they were in possession of the said farm and house, until the service of the country demanded them to yield the same for public use: *Be it enacted by the authority aforesaid*, That it shall not be lawful for the commissioners of forfeitures, of the middle district of this state, to sell or dispose of the said house and farm; nor the commissioners of sequestration to let or demise the same, until the legislature shall specially order the same; and that the said wardens and vestry shall and may occupy, possess, and enjoy the said premises, until such further order shall be made.

LAWS of the State of NEW-YORK.

Passed in the Sixth Session of the Legislature, held at Kingston, in Ulster County, by Adjournment.

C H A P. XII.

An ACT to prevent Private Lotteries, to remit certain Penalties, and to repeal the Acts therein mentioned.

Passed 14th February, 1783.

Preamble.

WHEREAS experience has proved, that private lotteries occasion idleness and dissipation, and have been productive of frauds and impositions:

1. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,*

Lotteries deemed a nuisance. That each and every lottery, other than such as shall be

authorized by the legislature, shall be deemed a common and public nuisance; and the justices of the supreme court, and all other justices of the courts of oyer and terminer or gaol delivery, and the justices of the courts of general and quarter sessions of the peace, at their several courts, within any of the respective counties in this state, shall have cognizance of such offence, and are hereby enjoined and required, in all and every of their charges hereafter to be made or given by them to the grand jurors in their respective courts, strictly to charge such grand jurors diligently to enquire

And indictable.

of, and to present or indict all offences against this act; and the court to which an indictment or presentment shall be preferred for such offence, shall be, and are hereby empowered and enjoined,

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to prosecute such indictment; or cause the same to be prosecuted in the usual manner of prosecution; and upon conviction to adjudge such fines and penalties as are herein after directed, together with the costs of prosecution, and to order execution; and to direct the fines or penalties, when recovered, to be applied in the manner herein after directed.

Lotteries prohibited. II. *And be it further enacted by the authority aforesaid,*

That no person or persons shall, within this state, open, set on foot, carry on, promote, draw or make, publicly or privately, any lottery, game or device of chance, of any nature or kind whatsoever, or by whatever name, denomination or title it may be called, known or distinguished, or shall by any such ways or means, expose or set to sale, any houses, lands, tenements or real estate, or any goods, wares, merchandises, cash, or other thing or things whatsoever: And that every person who shall offend

Offenders to forfeit, on conviction, the amount of the lottery in the premises against the true intent and meaning of this act, and shall thereof be convicted, by the oath of one or more credible witness or witnesses, in either of the courts herein before mentioned, in any part within this state, shall forfeit the amount of the whole sum or value for which such lottery was made; and if such sum or value shall not be satisfactorily ascertained to the said court at the time of the trial, then each such offender so convicted, shall forfeit five hundred

Or 500l.

How applied.

pounds; and that such offender shall be committed to the common gaol of the county, until such forfeiture, with the costs of prosecution, be paid; the one half of such forfeiture to be paid to the treasurer of this state, for the use of the people of this state, to be applied for the support of government; and the other half to the person or persons who shall have voluntarily given information of such offence, and prosecuted the same to effect; and for defect of such voluntary informant, then to be paid and applied as the first moiety of such forfeiture, is hereby directed to be paid and applied.

Persons selling or purchasing tickets, or any ways concerned in promoting lotteries. III. *And be it further enacted by the authority aforesaid,* That if any person shall vend, sell or barter, or offer to vend, sell or barter, any ticket or tickets of any such private lottery, game, or device of chance; or if any person or persons shall purchase the same, or in any other way become adventurer or adventurers therein, or be any ways concerned in any such lottery, game, or device of chance; either by printing, writing, or any other ways publishing an account thereof, or where tickets may be had or obtained for the same, or be in any wise aiding or assisting in the same; every person so offending, shall, on being convicted thereof as before-mentioned, in any of the courts before-mentioned, forfeit and pay for every such offence, the sum of ten pounds; and the costs of prosecution, to be levied and applied in like manner as directed with respect to the other forfeitures herein before-mentioned.

Forfeit 10l.

IV. *And be it further enacted by the authority aforesaid,* That if any person or persons, who shall be adventurer or adventurers in any such lottery, game, or device of chance as aforesaid, for transferring of any property by lot or chance, shall become entitled to any prize or prizes, he, she or they, shall be liable to forfeit, and shall forfeit the same, with costs of suit, to such person or persons who shall give information thereof, so that such offender may be convicted in manner before directed; and for the recovery of such prize or prizes, such person or persons so informing, shall be entitled to maintain an action in any court of record within

Adventurers to forfeit their prize.

this state, against any person who shall have opened, set on foot, carried on, or made such lottery, game, or device of chance, or against any person or persons who shall have sold, or offered for sale any ticket or tickets: And if the person or persons so informing, be or shall have been an adventurer only in such lottery, game, or device of chance, he, she or they shall, upon giving such information as aforesaid, be exempted from the penalty otherwise incurred by this act: And any person or persons adventuring as aforesaid, whose ticket or tickets shall be drawn or turn out blank, shall, upon giving information as aforesaid, so that the person or persons who shall have opened, set on foot, carried on, drawn, or made the said lottery or other game, or device of chance, or shall have sold or bartered, or offered for sale or barter such ticket or tickets, may be convicted, be entitled to recover against any such person or persons so convicted, double the sum which he, she, or they adventured in such lottery, game, or device of chance, with double costs of suit, by action of debt in any court of record within this state. And if any person or persons who shall have so opened, set on foot, carried on, drawn or made such lottery, game, or device of chance, as aforesaid, shall neither before or after the drawing or finishing of the same, give information thereof, so that the persons who have adventured therein, shall be convicted in the manner before directed, he, she, or they, so giving information, shall not only be exempted from the penalty otherwise incurred by this act, and be entitled to the reward allowed to persons in such case informing, but shall also have a right to retain all such monies or other effects, as he, she, or they may have received by the sale or barter of tickets.

V. *And be it further enacted by the authority aforesaid,* That every grant, bargain, sale, conveyance or transfer, of any lands, tenements, hereditaments or real estate, or of any goods or chattels whatsoever, which shall hereafter be made in pursuance of any such lottery, game, or other device, to be determined by chance or lot, are hereby declared void, and of no effect.

VI. *And be it further enacted by the authority aforesaid,* That where any two or more persons shall be concerned in setting on foot, carrying on, drawing, or making any such lottery, game, or device of chance, as aforesaid, or be joint adventurers in the same, the penalties herein before directed, for such offences respectively, may be recovered against and levied from all, or each, or either of them; any thing herein contained to the contrary notwithstanding.

VII. *And be it further enacted by the authority aforesaid,* That all offences against an act, entitled, An act for the more effectual prevention of private lotteries, passed on the ninth day of March, 1774, committed since the fourth day of July, one thousand seven hundred and seventy-six, and not hitherto presented or indicted by a grand jury, are hereby pardoned; and all penalties and forfeitures thereby incurred, are remitted; and the said act, except as to such person or persons, against whom presentment or presentments, indictment or indictments have been presented, is hereby repealed. And that as to all such person and persons, against whom any presentment or indictment has been preferred for such offence, and judgment remains to be rendered, such court to which such indictment or presentment was preferred, shall and may, at a future session of such court, discharge the offender or offenders, on his, her, or their paying the costs of prosecution, respectively: And for neglect of payment of the costs of prosecution, that such court before whom such offender is indicted, do commit such offenders respectively

Offences against a former act pardoned, and penalty remitted. And former laws repealed.

to the common gaol of the county, until they shall respectively have paid the costs of prosecution; and that all former laws of this state respecting lotteries, be, and the same is hereby repealed.

VIII. *And be it further enacted by the authority aforesaid,* That the justices of the peace, mayors, sheriffs, bailiffs, constables and other civil officers, within their respective jurisdictions, are hereby empowered, directed and required, to use their utmost endeavours, by all lawful ways and means, to prevent the opening, setting on foot, or drawing of any such unlawful lotteries, games or devices of chance, prohibited by this act. Provided always, That this act, or any matter, clause or thing therein contained, shall not affect, or be deemed, judged, or construed to affect any lottery or lotteries, established or be established by, or under the authority of the United States in Congress assembled, or any act, matter or thing, done or to be done in any wise, relating to such lottery or lotteries, by any person whomsoever.

Justices and other civil officers to prevent lotteries.

United States lotteries not affected by this act.

CHAP. XVII.

An ACT to incorporate the Minister, Elders and Deacons of the Reformed Protestant Dutch Church, of Tappan, or Town of Orange, in Orange County.

Passed 25th February, 1783.

Preamble,

*Reciting the bound-
aries of the lot of land
granted to the Dutch
Church at Tappan.*

WHEREAS Daniel Declark, Peter Haring, Johannis Blauvelt, Lambert Smith and Cozine Haring, original patentees of the tract of land called Tappan, or the town of Orange, in Orange county, did, by a certain deed-poll, bearing date the thirteenth day of October, 1729; release, quit claim, and confirm unto the then church officers of the reformed protestant Dutch church of Tappan aforesaid, and their successors, to the use of the said church, a certain piece or lot of land lying and being in Tappan aforesaid, in the said county of Orange, beginning by a beech-tree, standing a little to the north of Gysbert Bogert's path; and from thence running west twenty-seven chains, to the line of Johannis Meyer, to a tree there marked; then south, nine degrees west, one chain and ten links, to a stake; then east, one degree south, seventeen chains, to an oak marked; then south, nine degrees west, thirty chains, to old Tappan road, to a stake; then east by north, eighteen chains, to the Spar-Kill; then northerly along the Spar-Kill and the land of Gysbert Bogert, to the place where it first begun, containing fifty-five acres. And whereas the present minister, elders and deacons

*And the petition of
the minister, elders
and deacons.*

of the church aforesaid, by their humble petition, presented to the legislature, set forth, that from the time of the conveyance aforesaid, until the present day, the church officers of the church aforesaid, for the time being, have held and enjoyed the said piece or lot of land; and that the predecessors of the said petitioners have been at considerable expence in erecting on the said piece or lot of land, a decent edifice, in which the public worship of God is carried on, according to the usage and custom of the reformed protestant Dutch churches of the United Provinces in Europe, and in erecting other buildings for the reception and convenience of the minister of the said church: And further, That they the said petitioners and their predecessors, for several years past, have laboured under difficulties and disadvantages, for the want of corporate powers

and therefore pray to be incorporated, and to have the said piece or lot of land and buildings thereon, confirmed to them and their successors and assigns, for ever;

I. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That Samuel Verbryck, minister of the said reformed protestant Dutch church of Tappan, or town of Orange, in Orange county; Teunis Blauvelt, Robert Sickles, Abraham I. Haring and Martin Paulus, elders; and Abraham T. Blauvelt, Barent H. Nagel, John I. Haring and Gerret Jos Blauvelt, deacons of the same church, and their successors, elected, chosen, or appointed according to the mode practised in or by the reformed protestant Dutch churches or congregations, be, and they are hereby made and constituted a corporation and body politic in law and in fact, to have continuance for ever, by the name, stile, and title of, The minister, elders and deacons of the reformed protestant Dutch church of the town of Orange, in Orange county.

Minister, elders and deacons, and their successors incorporated.

II. *And be it further enacted by the authority aforesaid,* That they the said minister, elders and deacons and their successors, by the name, stile and title aforesaid, shall forever hereafter, be persons able and capable in law to have, take, receive, acquire, purchase, possess and enjoy lands, tenements, hereditaments, and goods, chattels, property and effects, of whatsoever kind, nature or quality, as any person or persons, or any corporation or body politic can or lawfully may do, to the annual value of five hundred pounds, equal to one thousand one hundred and eleven ounces, and one ninth part of an ounce, of Sevil, Pillar or Mexico plate, and no more; and the same lands, tenements, hereditaments, goods, chattels, property and effects, to lease, grant, demise, alien, bargain, sell and dispose of, at their own will and pleasure.

And enabled to hold lands and goods to the amount of 500l. per annum.

III. *And be it further enacted by the authority aforesaid,* That they the said minister, elders and deacons, and their successors, by the name, stile and title aforesaid at all times, forever hereafter, shall be persons able and capable in law, to sue and be sued, to plead and be impleaded, to answer and be answered unto, to defend and be defended, in any court or courts, in all and all manner of suits, complaints, pleas, causes, matters and demands, of whatsoever kind, nature or form they may be, and all and every matter and thing therein, to do in as full and effectual manner, as any other person or persons, or corporation, or body politic within this state, may or can do.

To sue and be sued.

IV. *And be it further enacted by the authority aforesaid,* That they the said minister, elders and deacons, and their successors, shall have full power and authority to make, have, and use one common seal, with such device and inscription as they shall think proper; and the same seal to break, alter and renew, at their pleasure.

To have a common seal.

V. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful, to and for the said minister, elders and deacons, and their successors, from time to time, to elect, from among themselves, a president, and to elect and appoint, from among themselves, or others, a treasurer, a clerk, and such other officers as they shall stand in need of; and the same president, treasurer, clerk, and other officers, or any of them, at their pleasure, to remove, change or continue.

President, treasurer and clerk, how to be elected.

VI. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful, to and for the said minister, elders and deacons, and their successors, from time to time, to elect, from among themselves, a president, and to elect and appoint, from among themselves, or others, a treasurer, a clerk, and such other officers as they shall stand in need of; and the same president, treasurer, clerk, and other officers, or any of them, at their pleasure, to remove, change or continue.

Their title to the said lot confirmed.

VI. *And be it further enacted by the authority aforesaid,* That all the estate, right, title and interest, which they the said herein before named Daniel Declark, Peter Haring, Johannis Blauvelt, Lambert Smith, and Cozine Haring, or any or either of them, immediately at and before their executing the aforesaid deed-poll, had of, in or to the herein before described piece or lot of land, and buildings and improvements thereon; be, and the same are hereby vested in and confirmed to the said minister, elders and deacons of the reformed protestant Dutch church of the town of Orange, in Orange county; and their successors and assigns, to have and to hold the same unto them, their successors and assigns, to and for their only proper use and behoof for ever.

C H A P. XXXI.

Remedy extended, 7th sess. ch. 54. sec. 2.

An ACT for granting a more effectual Relief in Cases of certain Trespases.

Passed 17th March, 1783.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That it shall and may be lawful for any person or persons, who are, or were inhabitants of this state, and who by reason of the invasion of the enemy, left his, her, or their place or places of abode, and who have not voluntarily put themselves respectively

The characters entitled to bring suits, and against whom.

into the power of the enemy, since they respectively left their places of abode, his, her or their heirs, executors or administrators, to bring an action of trespass against any person or persons who may have occupied, injured, or destroyed his her or their estate, either real or personal, within the power of the enemy, or against any person or persons who shall have purchased or received any such goods or effects, or against his, her, or their heirs, executors or administrators, in any court of record within this state, having cognizance of the same, in which action, if the same shall be brought against the person or persons who have occupied, injured or destroyed, or purchased, or received such real or personal estate as aforesaid, the defendant or defendants shall be held to bail.

Defendant held to bail.

[The remainder of this act is repealed, 20th sess. ch. 71.]

C H A P. XL.

An ACT for suspending the Prosecutions therein mentioned.

Passed 21st March, 1783.

Preamble.

WHEREAS many zealous friends to the freedom and independence of the United States of America, have during the present contest with Great-Britain, committed and done acts in support of the said freedom and independence which were not conformable to the strict letter of the law; and whereas no sufficient discrimination can be made before the restoration of public tranquility, between wanton acts of violence, and acts which proceeded from a desire to promote the public safety;

1. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,*

No prosecution for
its done, to promote
the American cause.

That no action, suit or prosecution, for any imprisonment, escape, assault, battery or trespass, done or committed by any such person or persons, with intent to further the common cause of America, from and after the nineteenth day of April, in the year one thousand seven hundred and seventy-five, and before the first day of January last, shall be commenced, sued, brought, or prosecuted by bill, plaint, indictment or information, by any person or persons whomsoever, until the further order of the legislature; And that any person or persons against whom any suit or action shall be commenced for such imprisonment, escape, assault, battery or trespass, either by bill, plaint, indictment or information, shall and may plead this act in bar, and discharge of such suit, action or prosecution; and that in cases where any such suit, action or prosecution has already been commenced, and not determined, the defendant or defendants may give in evidence this act, on the trial, upon any issue already joined or to be joined; Provided, That nothing herein contained, shall affect any action, suit or prosecution, in which judgment has been rendered, and execution awarded and levied.

C H A P. XLIII.

An ACT more effectually to prevent the purchasing or receiving Articles of public Property, from the Soldiery.

Passed 21st March, 1783.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That if any person or persons whomsoever, within this state, shall, directly or indirectly purchase, or shall take or receive for his, her, or their own use, or for the use of any other person or persons, from any non-commissioned officer or private of the army of the United States of America, any arms, accoutrements, cloathing, or other munition of war; the person or persons so purchasing, taking or receiving, shall forfeit treble the value of the same to be sued for and recovered with costs of suit, before any justice of the peace of the county where the offence shall arise, by any person who will sue for the same; the one moiety thereof to the prosecutor, and the other to the use of the poor of the district where the conviction shall happen, and be subject to indictment for an offence against the people of this state.

Persons purchasing
from the soldiery, to
forfeit treble the va-
lue.

LAWS of the State of NEW-YORK.

Passed in the Seventh Session of the Legislature, held at the City of New-York.

C H A P. IV.

Amended 14th Feb.
Ch. 27.

An Act for the Regulation of Sales by Public Auction.

Passed 20th February, 1784.

Preamble.

WHEREAS, it is necessary that provision should be made for the better regulation of sales at public vendue or auction within this state;

I. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That all goods, wares, merchandize and effects whatsoever, which

Goods exposed to sale at public vendue to be struck off to the highest bidder, and subject to a duty of 2 and 1-2 percent.

shall or may, at any time or times, from and after the passing of this act, be exposed to sale at public vendue, auction or outcry within this state, by any vendue-master or vendue masters, auctioneer or auctioneers, or by any person whatsoever, who shall be duly qualified and licenced as by this act is hereafter prescribed and directed, shall be struck off to the highest bidder; and shall be, and hereby are declared to be made subject to a duty of two pounds ten shillings, for every hundred pounds of the value or price at which the same shall be sold as aforesaid, and at and after the same rate, for every greater and lesser sum, to be paid by such person or persons, who shall so sell and dispose of the same; and in all cases where the vendue-master or auctioneer, or the owner or owners of such goods so exposed to sale, or any person or persons employed by them, or any or either of them, shall be the highest bidder, the said goods shall be subject to the payment of the said duties, as if they had been sold to any other person.

II. *And be it further enacted by the authority aforesaid,* That no person or persons whatsoever, other than such person or persons authorized and licenced in the manner herein after prescribed, shall, from and after the passing of this act, sell, dispose of or expose to sale, at public vendue, auction or outcry, within this state,

No persons to sell goods at vendue without licence.

any goods, wares, merchandize or effects whatsoever; and that it shall and may be lawful, to and for the persons herein after mentioned and described, by licence under their hands respectively, to authorize and empower such person or persons, citizen or citizens of this state, or any other of the United States of America, as shall or may apply for the same, qualified as in and by

By whom licences are to be granted

this act is required and prescribed, to act as vendue-master or vendue-masters, auctioneer or auctioneers, in the counties in which such person or persons, granting such licence or licences, shall respectively be mayor, recorder or judge: That is to say, in the city and county of New-York, the mayor thereof, or in case of a vacancy in the said office, the recorder of the said city and county for the time being; in the city of Albany, the mayor thereof, or in case of a vacancy in the said office, the recorder of the said city for the time being; and in the county of Albany, and

in the other counties, the first judge of the inferior court of common pleas of the said counties, or in case of a vacancy in the said office, or absence of such judge, either of the judges of such court in the said counties respectively.

III. *And be it further enacted by the authority aforesaid,*

Persons applying for licences.

That no licence shall be granted to any person or persons in the manner herein before mentioned, until such person or persons applying for such licence, shall have entered into a recognizance to the people of the state of New York, with two sufficient freeholders as sureties, before the mayor, recorder, or judge, who shall grant such licence, in the sum of two thousand pounds, lawful money of the said state; conditioned for the payment of the duty herein before mentioned, to the treasurer of the state for the time being; and also that the person or persons licenced as vendue-master or vendue-masters, auctioneer or auctioneers shall in all things, well, truly and faithfully, behave and conform himself or themselves, according to the true intent and meaning of this act: Of the record of which recognizance, the mayor, recorder or judge, before whom the same is taken, shall make duplicates, one whereof to be delivered as soon as conveniently may be, to the treasurer of this state, and the other to be retained by such mayor, recorder or judge, in his own possession.

[The remainder of this clause, requiring persons applying for licences to produce a certificate of their character, is repealed, 9th sess. ch. 29, sec. 2, and the next clause being the fourth section of this act, is repealed, 8th sess. ch. 80, sec. 13, and provided for by f. c. 14 and 15, of the same act.]

V. *And be it further enacted by the authority aforesaid,*

Auctioneers neglecting or refusing to account and pay the duties as required for each offence.

That if any vendue-master, or vendue masters, auctioneer or auctioneers, shall neglect or refuse to deliver such account on oath, and to pay the duties within the time limited as aforesaid; he or they so neglecting or refusing, shall respectively forfeit three hundred prunds, lawful money of this state, for every such offence; which forfeiture the treasurer of the state for the time being, is hereby empowered and directed to sue for and recover, in the name of and for the people of this state, in any court of record within the same; and every vendue master or vendue masters, auctioneer or auctioneers, who shall neglect or refuse to render such account, and pay the duty according to the true intent and meaning of this act, shall be deemed for such neglect or refusal to have forfeited his or their licence, and be thereafter disqualified from acting as a vendue master or auctioneer, by virtue thereof.

VI. *And be it further enacted by the authority aforesaid,* That any person or persons who shall presume to sell or dispose of any goods, wares, merchandize, or effects by way of public vendue, auction or outcry, without having previously obtained a licence as in and by this act is before directed and prescribed, shall forfeit the sum of fifty pounds, like money aforesaid, for each respective article so exposed to sale; to be recovered in manner as is herein before directed.

VII. *Provided always, and be it further enacted by the authority aforesaid,* That no vendue master or vendue-masters, auctioneer or auctioneers, shall expose to sale by public vendue, auction or outcry, within the cities of New-York or of Albany, any goods, wares, merchandize or effects liable to the duty aforesaid, but at their respective houses or stores, except rum, wine, brandy, molasses, indigo, rice, coffee, cotton, sugar, cordage, tobacco, mahogany, logwood, brailletto, fustick, camwood, earthen ware in

Vendue masters in New-York and Albany to expose to sale by vendue at their houses or stores.
Articles excepted.

crates or casks, and provisions in casks, under the penalty of ten pounds, like money aforesaid, for every such offence, to be recovered in manner as is herein before directed.

VIII. *And be it further enacted by the authority aforesaid,* That any and every vendue master or vendue masters, auctioneer or auctioneers, who shall receive or accept of any higher or further reward for his or their service in the sale or disposal of any goods, wares, merchandize or effects, which shall or may be committed to his or their care and management, than at and after the rate of two pounds and ten shillings for every hundred pounds in value, to which the said goods, wares, merchandize or effects by him or them actually sold and disposed of, shall amount; unless a previous agreement be made in writing between the owner of such goods, wares, merchandize or effects, and such vendue-master or auctioneer, for a higher or further reward, shall forfeit the sum of one hundred pounds like money as aforesaid, for every such offence; which forfeiture shall be recovered in the manner herein before mentioned.

IX. *Provided always, and it is hereby enacted by the authority aforesaid,* That all lands and tenements, and goods, belonging to this state, or the United States of America, and all goods and chattels which shall or may be seized by any public officer, for or on account of any forfeiture or forfeitures, penalty or penalties, ships and vessels, goods and effects of deceased persons, or goods distrained for rent or taken in execution, effects of insolvent debtors, utensils of husbandry, goods damaged at sea, and sold for the benefit of the owners or insurers, within twenty days after the same shall be landed, under the inspection of the master and port wardens of the port of New-York, or of such inspector or inspectors as are herein after mentioned; horses, neat cattle, hogs, sheep and also all articles the growth, produce or manufacture of this state, shall in no wise be subject to, but are hereby exempted and declared free from the duty above mentioned, and may be sold by any person or persons being a citizen or citizens of this state in any part of this state, other than the city and county of New-York, any thing herein before contained to the contrary in any wise notwithstanding. And that goods damaged at sea, and sold for the benefit of the owners or insurers, in any other city or county in this state than the city of New-York, shall be sold under the inspection of such person or persons as shall be thereunto appointed by the civil officers in such city or county respectively, who by this act are authorized to grant licences to vendue-masters or auctioneers; and the said civil officers are hereby authorized and required to appoint, in each such city or county, one or more, not exceeding three discreet persons, to be inspectors of such damaged goods as aforesaid.

X. *And be it further enacted by the authority aforesaid,* That no bellman, or crier, shall be employed at any vendue or auction in the city of New-York, except at the sale of such articles as by this act are allowed to be sold at other places than the residence of the respective vendue-masters or auctioneers; and that every person acting as bellman, or crier, at any vendue or auction in the city of New-York, except as before excepted, shall forfeit and pay for every such offence, the sum of twenty shillings, with costs of suit, to any person who will first sue for the same, before any of the aldermen of the said city.

Bellmen or criers when to be employed.

Officers fees on li-
cences and recogni-
zances.

XI. *And be it further enacted by the authority aforesaid,* That the mayor, recorder, or judge, who shall grant such licence and take such recognizance in manner as by this act is required, shall not exact or receive any greater or other fees than the sum of ten shillings, for taking the said recognizance, and granting the said licence as aforesaid.

XII. *And be it further enacted by the authority aforesaid,* That the treasurer of the state for the time being, shall, and is hereby required, to keep exact and distinct accounts of the monies to arise from time to time, by virtue of this act.

XIII. *And be it further enacted by the authority aforesaid,* That if any person shall be guilty of any fraud or deceit in the execution of this act, or in eluding or defeating the operation thereof; such person shall, on being legally convicted thereof, forfeit the sum of five hundred pounds, as a penalty for every such offence; when recovered, to be paid, the one half to the treasurer of the state, for the use of the state, and the other half to the use of the person who shall sue for the same.

C H A P. VIII.

An ACT to enable the Freeholders of the Town of Huntington, to hold their annual Town Meetings on the first Tuesday in April.

Passed 17th March, 1784.

WHEREAS the trustees of the freeholders and commonalty of the town of Huntington, in Suffolk county, by their petition in behalf of themselves and the said freeholders, have set forth, that by their charter, bearing date the fifth day of October, in the year of our Lord one thousand six hundred and ninety-four, they are obliged to hold their annual town-meetings on the first Tuesday in May, which is found to be attended with great inconvenience, and have prayed the legislature to enable them to hold the said meetings at an earlier period:

Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That from and after the passing of this act, it shall and may be lawful, to and for the freeholders and inhabitants of the town of Huntington aforesaid, to hold their annual town meetings on the first Tuesday in April in every year, and on no other day; and then elect trustees, a supervisor, town-clerk, assessors, constables, overseers of the poor, overseers of the highways, and fence viewers; and at such annual town-meetings, to make all such rules and regulations respecting the said town, and to transact all such business in the same manner as it was lawful for them to do at their annual town-meetings heretofore; any law, usage or custom, to the contrary in any wise notwithstanding.

Annual town-meet-
ings of Huntington
to be held on the first
Tuesday in April.

C H A P. IX.

An ACT to remove Doubts which may have arisen respecting the Charter Rights of the Minister, Elders and Deacons of the Reformed Protestant Dutch Church of the City of New-York, in Consequence of the late Invasion of this State.

Passed 17th March, 1784.

Reciting the suspen-
sion of the operation
of the charter by
means of the late war,

WHEREAS the operation of the charter of incorporation, to the minister, elders and deacons, of the reformed protestant Dutch church, of the city of New-

York, granted by the late king William the third, bearing date the 11th day of May, in the year of our Lord one thousand six hundred and ninety-six, hath been suspended by the war lately waged by the present king of Great-Britain, against the United States of America: in order therefore to put the said corporation, in the same state of activity which they enjoyed at the commencement of the said war;

I. Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the

The said charter continued, notwithstanding any non user or mis user, between the 18th April 1775, and the passing this act.

said charter, and all and singular the estates, rights, powers, authorities, liberties, privileges, franchises, pre-eminences and immunities thereby granted and confirmed, and which the said corporation and the members thereof, did actually hold, exercise and enjoy on the nineteenth day of April, one thousand seven hundred and seventy-five, by virtue of the said charter, or by virtue of any act of the legislature of this state, whilst the same was the colony of New-York, shall be, continue and enure in full force, virtue and efficacy, to all intents, constructions and purposes in the law whatsoever, notwithstanding any non-user or mis-user thereof, or of any part thereof, between the eighteenth day of April, one thousand seven hundred and seventy-five, and the day of the passing of this act. And that all and singular the members of the said corporation, shall be fully able and capable in the law, to exercise all and singular the powers and authorities, to their several and respective offices and places belonging, as well as their joint and several authorities in the election or appointment of such officers as ought to have been elected or appointed by them jointly, or by any one or more of them separately, at such times as are directed by the said charter or the said laws, notwithstanding any want of conformity to the said charter or the said laws, in such election or appointments, or either of them. And that the minister, elders and deacons, who from an adherence to the cause of their country, were compelled by the British army to leave the said city, or such of them as since the evacuation of the said city by the said army, returned thereto, shall be taken and deemed to be the minister, elders and deacons, of the reformed protestant Dutch church of the city of New-York, until others shall be appointed or elected in their stead, according to the said charter.

II. And whereas there is contained in the said charter or letters patent, a clause giving power to the said minister, elders and deacons, by and with the consent and advice of the members in communion of the said church, or the major part of them, to make rates and assessments upon all and every of the members in communion of the said church, for the purpose of raising money for the payment of the yearly stipends and salaries of the respective officers of the said church; and also for repairing, amending and enlarging the said church and steeple, belfrey, cemetery or church-yard, and other things necessary, belonging to the said church; which power having heretofore never been exercised, and the present minister, elders and deacons being willing to surrender the same; Be it therefore further enacted by the authority aforesaid, That the aforesaid power shall not at any time hereafter be exercised by the present minister, elders and deacons, or their successors, but shall be, and the same is hereby altogether abrogated, repealed and annulled.

C H A P. XII.

An ACT to appropriate certain Buildings to Public Uses.

Passed 29th March, 1784.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the island called Governor's or Nutton-Island, shall be, and the same hereby is assigned to, and for the use of the governor or person administering the government of this state for the time being, to be held and possessed by him until the legislature shall otherwise order and direct; and that it shall and may be lawful to and for the governor or person administering the government, to have and take the charge and superintendence of Fort-George, in the city of New-York, and other fortifications and public works and buildings, within the said city, erected for military purposes, on lands which are the property of the state, and to give such orders and directions from time to time as he may deem necessary to secure and preserve the said fort, fortifications, public works and buildings, from waste and destruction.

Nutton-Island assigned to the use of the governor.

Commissioners of forfeitures to set apart & assign a house, &c. to the governor.

Sec 7th sess. chap. 64. sec. 58.

of for his residence, except the house and buildings hereafter assigned for the use of the secretary of this state.

III. *And be it further enacted by the authority aforesaid,* That the lot of ground, with the dwelling-house, out-houses, stables and other buildings, thereon erected, situate on the west side of the street commonly called the Broad-way, in the ward distinguished by the name of the West-ward, and now vested in the people of this state, by the attainder of William Axtell, Esq. late one of the members of the council of the colony of New-York, shall be, and hereby is appropriated to the use of the secretary of this state, until the expiration of two years, from and after the last day of April next, for the accommodation of his family, and as a deposit for the archives and records of this state, unless other provision shall sooner be made by law in the premises. And the commissioners of forfeitures for the southern district, or any one of them, are hereby authorized and required, without delay, to put the secretary of this state for the time being into the possession of the said lot of land, and of the dwelling-house, out-houses, and other buildings thereon erected; any law to the contrary notwithstanding.

A house and lot appropriated to the use of the secretary.

C H A P. XVI.

An ACT to empower the Surveyor-General of this State, to procure the Maps, Papers and Records, which appertained to the Offices of Surveyor-General, or Receiver-General of the late Colony of New-York.

Passed 2d April, 1784.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,

Executors, &c. of Alexander Colden to deliver official papers to the surveyor-general.

That it shall and may be lawful to and for the executors or administrators of Alexander Colden, Esquire, late surveyor-general of the colony of New-York, and they are hereby severally required, to deliver to the surveyor general of this state for the time being, or to his order, all papers, books, maps and records, together with the chests, trunks and boxes in which the same may be contained, which they or any of them may be in possession of, and which did appertain to the office of surveyor-general of the said colony, or to the office of receiver-general of the same.

II. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the secretary of this state for the time being, and he is hereby required to deliver to the surveyor-general of this state for the time being, or to his order, all such papers, books, maps and records, which may be in custody of the said secretary, and which did heretofore appertain to the office of surveyor-general, or to the office of receiver-general of the late colony of New-York, together with the chests, trunks and boxes in which such papers may be contained.

III. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for any other public officer or private person whatsoever, into whose custody any papers, books, maps and records whatever may have come, appertaining to the said offices of surveyor-general, or receiver-general of the late colony of New-York, and they are hereby required to deliver the same to the surveyor-general of this state for the time being or to his order.

Secretary to give copies of patents and papers to the surveyor-general.

IV. *And be it further enacted by the authority aforesaid,* That the secretary of this state shall from time to time, when thereunto required by the surveyor-general of this state, furnish the said surveyor-general with certified copies or extracts of such patents, Indian purchases, locations, surveys, and other papers as he shall from time to time signify that he stands in need of, in order more effectually to execute the trust reposed in him as surveyor-general.

C H A P. XVII.

An ACT to alter the Names of the Counties of Tryon and Charlotte.

Passed 2d April, 1784.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That from and after the passing of this act, the county of Tryon shall be called and known by the name of Montgomery, and the county of Charlotte shall be called and known by the name of Washington.

II. *And be it further enacted by the authority aforesaid,* That all writs, precepts and other process issued out, and from the inferior courts of common pleas, and the courts of general sessions of the peace in the said counties in and by the name of the county of Tryon, and in and by the name of the county of Charlotte, shall be and remain in the same state and condition, as if the same had been issued from the said courts by the name of the county of Montgomery, and by the name of the county of Washington, and that all persons bound by recognizance to appear in the said courts of general sessions of the peace, shall appear in like manner, as if the name of the said counties had not been changed; any thing in any former acts contained to the contrary notwithstanding.

C H A P. XVIII.

Altered as to the
Dutch churches, 11th
cell ch. 61.

An ACT to enable all the religious Denominations in this State to appoint Trustees, who shall be a Body Corporate for the Purpose of taking Care of the Temporalities of their respective Congregations, and for other Purposes therein mentioned.

Passed 6th April, 1784.

Preamble,

Reaching 38th article
of the constitution.

WHEREAS by the thirty-eighth article of the constitution of the state of New York, it is ordained, determined and declared, that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, should forever thereafter be allowed within this state to all mankind, Provided that the liberty of conscience, thereby granted, should not be so construed, as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state; and whereas many of the churches, congregations and religious societies in this state (while it was a colony) have been put to great difficulties to support the public worship of God, by reason of the illiberal and partial distribution of charters of incorporation to religious societies, whereby many charitable and well disposed persons have been prevented from contributing to the support of religion, for want of proper persons authorized by law to take charge of their pious donations, and many estates purchased and given for the support of religious societies, now vest in private hands, to the great insecurity of the society, for whose benefit they were purchased or given, and to the no less disquiet of many of the good people of this state: And whereas it is the duty of all wise, free and virtuous governments, to countenance and encourage virtue and religion, and remove every lett or impediment to the growth and prosperity of the people, and to enable every religious denomination to provide for the decent and honourable support of divine worship, agreeable to the dictates of conscience and judgment;

The duty of government to encourage virtue and religion.

I. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That from and after the passing of this act, it shall and may be lawful to and for the male persons of full age, belonging to any church congregation or religious society not already established within this state, or which may at any time hereafter be within the same, to assemble and meet together, at the church, meeting-house, or other place where they statedly attend for divine worship, and then and there by plurality of voices, to elect, nominate and appoint any number of discreet and prudent persons of their church, congregation or society, not less than three or exceeding nine in number as trustees, to take the charge of the estate and property belonging to their respective churches, congregations or religious societies, and to transact all affairs relative to the temporalities of their respective churches, congregations or societies: That at such election, every male person of full age, who has statedly worshipped with the said church, congregation or society, and has formerly been considered as belonging thereto, shall be entitled to a voice at such first election.

II. *And be it further enacted by the authority aforesaid,* That the said election so to be held as aforesaid, shall be conducted in the following manner, to wit; The minister of the said church, congregation or society, or in case of his death or absence, one of the elders or deacons, church wardens or vestrymen of the said church, congregation or society, and for want of such officers, any other person being a member or a stated hearer in such church,

Election of trustees,
how to be conducted.

congregation or society, shall publicly notify the congregation of the time when, and place where the said election shall be held, at least fifteen days before the day of election; that the said notification shall be given for two successive sabbaths, or days on which such church, congregation or society shall statedly meet for public worship, preceding the day of election, that on the said day of election two of the elders or church wardens of the said church, congregation or society, shall preside at such election, receive the votes of the electors, be the judges of the qualification of such electors, and the officers to return the names of the persons, who by the plurality of voices shall be elected to serve as trustees for the said church, congregation or society; and in case there should be no elders or church wardens in the said church, congregation or society, at the time of such election, then and in such case two of the deacons or vestrymen of the said church, congregation or society, shall preside at such election, receive the votes and judge of the qualification of the electors, and be the returning officers; and in case there shall be no such officers in such church, congregation or society, then it shall and may be lawful for the said electors to nominate and elect by plurality of voices, two of the members of the said church, congregation or society to hold the said election, and be the returning officers as aforesaid.

III. *And be it further enacted by the authority aforesaid,* That the said returning officers, who shall hold the said election, shall immediately after the said election certify under their hands and seals, the names of the persons elected to serve as trustees for the said church, congregation or society, in which certificate the stile, name, or title by which the said trustees and their successors shall forever thereafter be called, distinguished and known, shall be particularly mentioned and described; which said certificate, being first duly proved or acknowledged before the chancellor of this state, or one of the judges of the supreme court, or any one of the judges of the inferior court of common pleas of the county, for the time being, in the manner deeds or other writings have been usually proved or acknowledged, shall be forthwith recorded by the clerk of the county, for the time being, in a book to be kept by him for that purpose; for which service, a fee of six shillings may be taken, and no more.

IV. *And be it further enacted by the authority aforesaid,* That the said persons so to be elected, returned and registered, shall be, and hereby are declared to be the trustees for the said church, congregation or society, for which they shall be so chosen, and shall be, and hereby are authorized and empowered to take into their charge, care, custody and possession, all the temporalities belonging to the said church, congregation or society, for which they shall be elected trustees, whether the same consist of lands, tenements, hereditaments, goods or chattels, and whether the same shall have been given, granted or devised directly to the said church, congregation or society, or to any person or persons in trust, to and for their use; and although such gift, grant or devise, may not have strictly been agreeable to the rigid rules of law, or might on strict construction, be defeated by the operation of the statutes of Mortmain; and that the said trustees, from the time of their election as aforesaid, and their successors forever thereafter, shall be a body politic and corporate, and shall be able and capable in the law, to hold, maintain and recover all their estates, rights and privileges, of what name or kind soever, and to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, by the name, stile and title mentioned and described in the said certificate so to be recorded as aforesaid.

And their powers
as a body politic rel-
ecting estates, here-
of are held.

said, in all suits, quarrels, controversies, causes, actions, mat-
ters and things whatsoever, in any court or courts of com-
mon law or equity whatsoever; and by the same name,
title and title, they and their successors shall lawfully have, hold, use, exercise
and enjoy, all and singular the churches, meeting-houses, parsonages, bury-
ing-places, and lands thereunto belonging, with the hereditaments and appur-
tenances heretofore by the said church, congregation or society held, occupied
or enjoyed, by whatsoever name or names, person or persons, the same
were purchased and had, or to them given or granted, or by them or any of
them used and enjoyed for the uses aforesaid, to them and their successors,
to the sole and only proper use and benefit of them the said trustees, and their
successors for ever, in as full, firm and ample a manner in the law, as if the
said trustees had been legally incorporated, and made capable in the law, to
take, receive, purchase, have, hold, use, and enjoy the same, at and before
the purchasing, taking, receiving and holding of the said churches, meeting-
houses, parsonages, burying-places and lands thereunto belonging, and law-
fully had, held and enjoyed the same; any law, usage or custom to the con-
trary hereof, in any wise notwithstanding.

V. *And be it further enacted by the authority aforesaid,* That the said trus-
tees, and their successors, by the same name, title and title, from the time of
their election as aforesaid, shall have full power, good right, and lawful au-
thority, to have, take, receive, acquire, purchase, use and

Trustees power to
receive and enjoy es-
tates, not exceeding
2000. per annum.

enjoy lands, tenements and hereditaments, goods and chat-
tels, and to demise, lease and improve the said lands, tene-
ments, and hereditaments, and to use and improve such
goods and chattels to the benefit and use of the said church, congregation or
society, and other pious uses, not exceeding twelve hundred pounds yearly
rent or income; any law, usage or custom to the contrary hereof, in any
wise notwithstanding; and that it shall and may be lawful for the said trustees
and their successors, to build and erect churches or meeting-houses on their
said lands, and to alter, enlarge, or amend the same or any
part thereof, and also to erect and build dwelling-houses for
the use of their ministers, and school-houses and other build-
ings for the use of the said churches, congregations or societies. as to the said
trustees and their successors shall from time to time appear necessary.

And to build houses
for worship, and cer-
tain other houses.

VI. *And be it further enacted by the authority aforesaid,* That it shall
and may be lawful for the said trustees and their successors for ever hereafter

Trustees to have a
common seal.

to have and use a common seal, and the same to alter, break
and new make at their discretion; and also, that it shall and
may be lawful for the said trustees and their successors, or any two of them,
at any time or times, and as often as it shall be needful, to call a meeting
of the said trustees, and that the majority of the said trustees when met,
shall be a sufficient quorum, and shall have power to make such rules and
orders for the managing the temporal affairs and concerns of the said church,
congregation or society, as they or the major part of them so met, shall agree
upon, and shall have the sole disposition and ordering of all payments of the
monies belonging to the said church, congregation or society, and also the
power of appointing a clerk and treasurer to the said board of trustees, and
also a collector to collect and receive the rents and revenues of the said
church, congregation or society; and the said clerk, treasurer or collector,
at their pleasure, to remove, and to elect and choose others in their room and
stead; all which orders, rules and payments, shall be honestly and fairly kept

by the said clerk, in books to be provided for that purpose; and that the majority of the said trustees, so met as aforesaid, shall have power to establish and regulate the fees that shall be allowed to the said clerk, treasurer and collector, and also to regulate and order the renting the pews in the said churches or meeting-houses, and the perquisites of the said church, congregation or society, arising for the breaking of the ground in the cemetery or church-yards and in the churches or meeting-houses for burying the dead, and all other matters, touching and concerning the temporal concerns and revenues of the said churches, congregations and societies respectively.

Pew rents and perquisites, how regulated.
 VII. And to the end, That a perpetual succession of trustees may be maintained and kept up in the said churches, congregations and societies respectively; *Be it further enacted by the authority aforesaid* That the trustees first to be chosen as aforesaid, shall continue in office for the space of three years, to be computed from the day of their election; and that immediately after the said first election, the said trustees shall be divided by lot into three classes, numbered one, two and three; and that the seats of the member or members of the first class, shall be vacated at the expiration of the first year; the member or members of the second class, at the expiration of the second year; and the member or members of the third class, at the expiration of the third year; to the end that the third part of the whole number of trustees, as nearly as possible, may be annually chosen.

Perpetual succession of trustees, how to be kept up.
 VIII. And in order to supply and fill up the several vacancies in the said board of trustees as they shall arise; *Be it further enacted by the authority aforesaid*, That the said trustees for the time being, or the major part of them, shall from time to time, notify in writing, the minister for the time being, and in case of his death or absence, the elders or church-wardens, and in case there shall be no elders or church wardens, the deacons or vestrymen of any such church, congregation or society, of such vacancies, specifying the names of the trustees, whose times will expire at least one month before such vacancies shall happen, and that the said minister, and in case of his death or absence, one of the said elders or church wardens, or deacons or vestrymen, shall in manner aforesaid, proceed to notify the members of the said church, congregation or society, of such vacancies, and appoint the time and place for the election of new trustees to fill up the same which election shall be held at least six days before such vacancies shall happen, and that at all such future elections, two of the elders or church-wardens of the said church, congregation or society, and in case there shall be no elders or church-wardens, two of the deacons or vestrymen, and in case there shall be no such officers, then such other persons to be elected returning officers as aforesaid, shall preside and receive the votes of the electors, judge of the qualifications of the said electors, and be the returning officers as aforesaid, and that a certificate under the hands and seals of the said returning officers specifying the names of the persons elected to fill up such vacancies, shall entitle the several persons elected to a seat at the board of the said trustees; and in case any of the trustees shall refuse to act, die, or remove within the year, it shall be lawful for the male electors of the said church, congregation or society, at any time after such contingency shall happen, to assemble and meet together, upon notice to be given in manner aforesaid, and then and there, by plurality of voices, to elect and appoint others to fill up such vacancy or vacancies.

Vacancies how to be filled up.
Others to be chosen in the room of trustees refusing to act, dying, or removing.

who shall have full power and authority to do, execute and perform the office of trustee or trustees, in the place of such as he or they shall be so chosen to succeed, and shall continue in office for so long time as the person or persons so dying, refusing or removing, might have served, had he or they lived, accepted or continued in the said office.

XI. And be it further enacted by the authority aforesaid, That no male person belonging to the said church, congregation or society, shall be entitled to vote for trustees as aforesaid, at any election succeeding the said first election above mentioned, until he shall have been a stated attendant on divine worship in the said church, congregation or society, at least one year before such election, and shall have contributed to the support of the said church, congregation or society, according to the usages and customs thereof; and that the said clerk to the said trustees for the time being, shall keep a register of the names of all such persons as shall from time to time, desire to become stated hearers in the said church, congregation or society, and shall therein note the time when such request was made; and that the said clerk shall, from time to time, attend all such future elections, in order to test the qualifications of such electors, in case any objections shall be made as to the time when such elector became a stated attendant on divine worship in the said church, congregation or society.

X. And be it further enacted by the authority aforesaid, That nothing in this act contained, shall be construed, adjudged or taken to give to the said trustees or their successors, any power or authority whatsoever, to fix or ascertain the salary or salaries, stipend or stipends, to be paid to the minister or ministers of the said church, congregation or society, and that whenever it shall be necessary to fix or ascertain such salaries or stipends, the same shall be fixed and ascertained by the electors aforesaid, or the major part of them, at a meeting to be called for that purpose; which salaries or stipends, when fixed and ascertained, shall be ratified and confirmed by the said trustees, or the major part of them, by an instrument in writing, under the common seal of the said trustees, and the said trustees, or the major part of them, shall, and hereby are authorised and empowered to pay and discharge the same, out of the revenues of the said church, congregation or society;

XI. And be it further enacted by the authority aforesaid, That nothing herein contained, shall be construed, adjudged or taken to abridge or affect the rights of conscience or private judgment, or in the least to alter or change the religious constitutions or governments of either of the said churches, congregations or societies, so far as respects, or in any wise concerns the doctrine, discipline or worship thereof.

XII. And be it further enacted by the authority aforesaid, That all and every corporation, trustees, or persons intrusted with the management, care and disposition of the temporalities of any church, congregation or religious society, already incorporated, or that may hereafter be incorporated within this state, or a majority of them respectively, shall, and hereby are required once in every three years, and between the first day of January and the first day of April, triennially, to be computed from the first day of January next ensuing, to exhibit upon oath to the chancellor, or to one of the justices of the supreme court, or any of the judges of the court of common pleas in the county where such church, congregation or religious society shall be situ-

ated, an account and inventory of all the estate, both real and personal, belonging to such church, congregation or religious society (at the time of making oath and exhibiting such inventory and account) for which they respectively are trustees or managers as aforesaid, together with an account of the annual revenue arising therefrom; and if any such trustees or persons intrusted with the care, management and disposition of the temporalities of any church, congregation or religious society, as aforesaid, shall neglect to exhibit an account and inventory of the estate, and annual revenue of the church, congregation or religious society, of which they respectively are trustees, or intrusted with the care and disposition of the temporalities as aforesaid, for any space of time longer than one year after the expiration of the three years, within which it is hereby made their duty, respectively, to render such account and inventory as aforesaid, such trustees or persons intrusted with the management, care and disposition of any of the temporalities of any church, congregation or religious society as aforesaid, shall from thenceforth cease to be a body corporate.

XIII. *And be it further enacted by the authority aforesaid,* That in all cases where it shall appear, by the accounts and inventory herein before directed to be exhibited by the trustees or other persons aforesaid, to the chancellor, justices or judges as aforesaid, that the annual revenue of any church, congregation or religious society, exceeds the sum which by virtue of any charter or law they may or can respectively hold, possess or enjoy, it shall be

If annual revenue exceed the sum allowed by charter or by law, the same to be reported to the legislature.

and hereby is made the duty of such chancellor, justices or judges as aforesaid, respectively to report the same, together with the account and inventory, by which such excess shall be made to appear as aforesaid, to the legislature at their then next meeting.

XIV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful, to and for every religious corporation, created by letters patent under the great seal of the colony of New-York, to have, hold, occupy and enjoy lands, tenements, goods and chattels of the yearly value of one thousand two hundred pounds, although the letters patent by which such corporation respectively were created, should contain a clause or clauses restricting and limiting the annual revenue and income of such corporation at a sum less than one thousand two hundred pounds; any law, usage or custom to the contrary in any wise notwithstanding.

C H A P. XXV.

An ACT to ascertain Weights and Measures within this State.

Passed 10th. April, 1784.

WHEREAS it is agreeable to equity and beneficial to commerce, that a people who live in the same community, shall have one equal and just weight and balance according to a true and perfect standard, and assize of measure to be established by law, without which necessary provisions, frauds and deceits may be practised with impunity.

1. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,*

There shall be one just beam one certain weight and measure.

That from and after the first day of June next, there shall be one just beam, one certain weight and measure, that is to say, avoirdupoise and troy weights, bushels, half bushels, pecks and half pecks, according to the standard in use in this state, on the day

of the declaration of the independence thereof; and that the standard weights and measures in the custody of William Hardenbrook, who, before and at the time of the said declaration was the public sealer and marker of all beams and weights, and measures, within the city and county of New-York, which standard is according to the standard of the court of exchequer in that part of Great-Britain, called England, shall forever hereafter be deposited with, kept and preserved by the clerk of the peace, or common clerk of the city and county of New-York, for the time being, and shall be and hereby are declared and established to be and remain the standard, for ascertaining all beams, weights and measures throughout the state, any usage or custom to the contrary thereof notwithstanding; and the said clerk of the peace or common clerk, now, and for the time being, shall take an oath to be administered to him in open court before the mayor, recorder and aldermen of the said city, well and faithfully to preserve the said weights, seals and measures, and to suffer no other person to make use of the same, except a sworn public sealer and marker of weights and measures: Provided always, That the said William Hardenbrook shall deliver the said beam, weights and measures, to the clerk of the peace, or common clerk of the said city and county, in the presence of the mayor, recorder, and one or more of the aldermen of the said city, and shall declare on his solemn oath, that the said beam, weights or measures are the same which he received from the court of exchequer aforesaid, according to the best of his knowledge and belief.

II. *Provided always, and be it further enacted*, That if any of the said standard beams, weights and measures, shall be broken, impaired or missing, that it shall and may be lawful, to and for the mayor and aldermen of the city of New-York, in common council convened, to cause to be delivered to the said clerk of the peace, or common clerk for the time being, any standard, beam, weights and measures, respectively, to supply such deficiency, taking care that the same is according to the standard established in the late colony, now state of New-York, immediately preceding the declaration of independence of this state.

III. *And be it further enacted by the authority aforesaid*, That for the better observance and execution of this act, it shall and may be lawful to and for his excellency the governor of this state for the time being, by and with the advice and consent of the council of appointment, to appoint fit persons in all convenient and proper places within this state, for sealing and marking all beams, weights and measures; that the persons so to be appointed, shall impress with the letter A, all beams, weights and measures to be sealed and marked by each of them respectively, and shall respectively take and subscribe an oath before one of the judges of the court of common pleas of the county in which he or they shall reside, for the faithful execution of the trust to be committed to them by virtue of this act; and the judge before whom such oath shall be taken, shall cause a certificate thereof to be filed with the clerk of the county, wherein such judge shall reside; and every such sworn public sealer and marker of weights, seals and measures, shall be entitled to receive for his pains in sealing and marking all such beams and measures, as shall from time to time for that purpose be brought to him, the rate of nine-pence, and for every weight and every small liquid measure, one penny, and no more: Saving always nevertheless unto the cities of New-York and Albany, and borough of Westchester, and the mayors thereof for the time being,

Council of appointment to appoint persons for sealing and marking all beams, weights & measures.

Their fees.

Corporation rights saved.

all such rights, privileges and usages, as they respectively can justly claim, as clerks of the markets within the said cities and borough, or otherwise howsoever; any thing herein contained to the contrary hereof notwithstanding.

C H A P. XXVI.

An ACT authorizing Magistrates within this State, to take Affidavits to be used in the Manner therein mentioned.

Passed 10th April, 1784.

Preamble,

Respecting witnesses in causes to be tried in other states.

WHEREAS persons residing within this state may be material witnesses in causes to be tried in others of the United States, and may refuse to attend at the trial of such causes, or voluntarily to make affidavit of the circumstances they may know, touching the matter in dispute: And whereas it is represented to this legislature, that it is the practice in the courts of justice in some of the United States, to admit as legal evidence, affidavits taken in the manner herein after-mentioned:

I. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,*

How to be compelled to make affidavit, to be transacted to the court where the cause is depending.

That it shall be lawful for a judge of the supreme court, or any magistrate of any city or county within this state, upon application, by, or in behalf of either of the parties to a suit depending in a court of judicature in any other of the United States, and information, that any person residing within the county where such application is made, is a material witness in the suit, to issue a summons to such person, requiring him or her to appear and make affidavit of all such matters and things, as he or she may know concerning the same, and to transmit the affidavit to the court where the cause is depending, in such manner as the practice of such court may require to render such affidavit legal testimony.

II. *Provided always, and be it further enacted by the authority aforesaid, That* every witness who shall be summoned to give evidence in manner aforesaid, shall be entitled to receive from the party at whose instance he shall be summoned, four shillings for every day he shall give his attendance; and that no witness shall be bound to appear by virtue of this act, except only before one of the judges or magistrates who shall be nearest to the place of residence of such witness.

III. *And be it further enacted by the authority aforesaid, That* whenever any person shall refuse to appear and make affidavit in pursuance of such summons, a warrant shall issue from such judge or magistrate, to compel his appearance, and if on his appearance he shall refuse to make affidavit, or affirmation if a Quaker, of the fact which may be within his knowledge, touching the matters in question, he shall be committed to the common gaol of the county, there to remain without bail or mainprize for the term of six calendar months.

C H A P. XXX.

An ACT to remove Doubts concerning the Corporation of the Chamber of Commerce, and to confirm the Rights and Privileges thereof.

Passed 13th April, 1784.

WHEREAS George the Third, king of Great-Britain, did, on the thirteenth day of March, one thousand seven hundred and seventy,

grant certain letters patent to the persons therein named, under the great seal of the then colony of New-York; which said letters patent are in the words following, that is to say;

Reciting former charter of the chamber of commerce.

GEORGE the Third, by the Grace of God, of Great-Britain, France and Ireland, king, defender of the faith, and so forth; To all whom these presents shall come, greeting:

Whereas a great number of merchants in our city of New-York, in America, have, by a voluntary agreement, associated themselves for the laudable purposes of promoting the trade and commerce of our said province: And whereas John Cruger, Esquire, the present president of the said society, by his humble petition presented in behalf of the said society, to our trusty and well-beloved Cadwallader Colden, Esquire, our lieutenant-governor and commander in chief of our said province of New-York, and the territories depending thereon, in America, and read in our council for our said province on the twenty-eighth day of February last past, hath represented to our said lieutenant-governor, that the said society (sensible that numberless inestimable benefits have accrued to mankind from commerce, that they are in proportion to their greater or lesser application to it, more or less opulent and potent in all countries, and that the enlargement of trade will vastly increase the value of real estates, as well as the general opulence of our said colony) have associated together for some time past, in order to carry into execution among themselves, and by their example to promote in others such measures, as were beneficial to these salutary purposes; and the said society having, with great pleasure and satisfaction, experienced the good effects which the few regulations already adopted had produced, were very desirous of rendering them more extensively useful and permanent, and more adequate to the purposes of so benevolent an institution; and therefore the petitioner in behalf of the said society, most humbly prayed our said lieutenant-governor, to incorporate them a body politic, and to invest them with such powers and authorities, as might be thought most conducive to answer and promote the commercial, and consequently the landed interest of our growing colony; which petition being read as aforesaid, was then and there referred to a committee of our said council, and afterwards on the same day, our said council in pursuance of the report of the said committee, did humbly advise and consent that our said lieutenant-governor by our letters patent, should constitute and appoint the petitioner and the present members of the said society, a body corporate and politic, by the name of, The corporation of the chamber of commerce, in the city of New-York, in America, agreeable to the prayer of the said petition: Therefore, we being willing to further the said laudable designs of our said loving subjects, and to give stability to an institution from whence great advantages may arise, as well to our kingdom of Great-Britain as to our said province; KNOW YE, That of our especial grace, certain knowledge and mere motion, we have willed, ordained, given, granted, constituted and appointed, and by these presents, for us, our heirs and successors, do will, ordain, give, grant, constitute and appoint, that the present members of the said society, associated for the purposes aforesaid: That is to say,

John Cruger, Elias Desbrosses, James Jauncy, Jacob Walton, Robert Murray, Hugh Wallace, George Folliot, William Walton, John Alsop, Henry White, Philip Livingston, Samuel Verplank, Theophilact Bache, Thomas White, Miles Sherbrooke, Walter Franklin, Robert Ross Waddle, Acheson Thompson, Lawrence Kortright, Thomas Randall, William Mc. Adam, Isaac Low, Anthony Van Dam, Robert

Names of the former members thereto.

Watts, John Harris Cruger, Gerard Walton, Isaac Sears, Jacobus Van Zandt, Charles Mc. Evers, John Moore, Lewis Pintard, Levinus Clarkfon, Nicholas Gouverneur, Richard Yates, Thomas Marston, Peter Hassenclever, Alexander Wallace, Gabriel H. Ludlow, Thomas Buchannan, William Neilson, Thomas Simpson, Peter Kettletass, Gerard W. Beekman, Jacob Watson, Richard Sharpe, Peter Remsen, Henry Remsen, junior, William Seton, Edward Laight, John Reade, Robert Alexander, Thomas W. Moore, Abraham Lynsen, John Roosevelt, Nicholas Hoffman, Hamilton Young, Thomas Walton, John Thurman, John Weatherhead, Garret Rapaljie, Gerard Duykinck, William Stapples, William Imlay, Augustus Van Horne, Henry C. Bogert, George W. Ludlow, Joseph Bull, Leonard Lispenard, Thomas Miller, James Beekman, Samuel Kemble, Alexander Mc. Donald, and Samuel Bayard, junior, all of our city of New-York, in our said province of New-York, merchants, and their successors, to be elected by virtue of this our present charter, shall forever hereafter be one body corporate and politic, in deed, fact, and name, by the name, stile and title of, The corporation of the chamber of commerce in the city of New-York, in America,

Stile of the corporation.

and them and their successors, by the same name, We do by these presents, really and fully make, erect, create, constitute and declare one body politic and corporate, in deed, fact and name forever, and will give, grant and ordain, that they and their successors, The corporation of the chamber of commerce, in the city of New-York, in America, by the same name, shall and may have perpetual succession, and shall and may, by the same name, be persons capable in the law, to sue and be sued, implead and be impleaded, answer and be answered, defend and be defended, in all courts and elsewhere, in all manner of actions, suits, complaints, pleas, causes, matters and demands whatsoever, as fully and amply as any other of our liege

Capable to hold lands in fee simple.

subjects of our said province of New-York, may or can sue or be sued, implead or be impleaded, defend or be defended by any lawful ways or means whatsoever, and that they and their successors, by the same name, shall be forever hereafter persons capable and able in the law, to purchase, take, receive hold and enjoy to them and their successors, any messuages, tenements, houses and real estates whatsoever, and all other hereditaments of whatsoever nature, kind and quality they be, in fee simple, for term of life or lives, or in any other manner howsoever, and also any goods, chattels, or personal estate whatsoever, as well for enabling them the better to carry into execution, encourage and promote, by just and lawful ways and means, such measures as will tend to promote and extend just and lawful commerce, as to provide for, aid and assist at their discretion, such members of our said corporation as may be hereafter reduced to poverty, and their widows and children. Provided always, The clear yearly value of the said real estate doth not at any time exceed the sum of three thousand pounds

Value of the real estate not to exceed 3000l. sterling, annual income.

sterling lawful money of our kingdom of Great-Britain, and that our said corporation of the chamber of commerce, in the city of New-York, in America, and their successors, forever, by the same name, shall and may have full power and authority to give, grant, sell, lease, demise and dispose of the same real estate and hereditaments whatsoever, for life or lives, or years, or forever, and all goods, chattels and personal estates whatsoever, at their will and pleasure according as they shall judge to be most beneficial and advantageous to the good ends and purposes above mentioned; and that it shall and may be law-

To have a common seal for them and their successors forever hereafter, to have a common seal to serve for the causes and business of them and their successors, and the same seal to change, alter, break and make new, from time to time, at their pleasure; and also, that they and their successors by the same name, shall, and may have full power and authority, to erect and build out of their common funds, or by any other ways or means for the use of the said corporation hereby erected, any house, houses or other buildings, as they shall think necessary and convenient. And for the better carrying into execution the purposes aforesaid, our royal will and pleasure is, and we do hereby give and grant to the corporation of the chamber of commerce, in the city of New-York, in America, and their successors forever, that there shall be forever hereafter belonging to the said corporation, one president, one or more vice-president or vice-presidents, one or more treasurer or treasurers, and one secretary; and for the more immediate carrying into execution our royal will and pleasure herein, we do hereby assign, constitute and appoint the above-named John Cruger, Esquire, to be the present president, the above named Hugh Wallace, to be the present vice-president, the above named Elias Desbrosses, to be the present treasurer, and the above named Anthony Van Dam, to be the present secretary of our said corporation hereby erected, who shall hold, possess and enjoy their said respective offices, until the first Tuesday in May now next ensuing; and for the keeping up the succession in the said offices, our royal will and pleasure is, and we do hereby for us, our heirs and successors, establish, direct and require, and give and grant to the said corporation of the chamber of commerce, in the city of New-York, in America, and their successors forever, that on the said first Tuesday in May, now next ensuing, and yearly and every year forever thereafter, on the first Tuesday in May in every year, they and their successors shall meet at some convenient place in our said city of New-York, to be fixed and ascertained by some of the bye-laws or regulations of our said corporation, and there by the majority of such of them as shall so meet, shall by ballot, or in such other manner and form as shall be regulated by the bye-laws or regulations of our said corporation, elect or choose one president, one or more vice-president or vice-presidents, one or more treasurer or treasurers, and one secretary, to serve in the said offices for the ensuing year, who shall immediately enter upon their respective offices, and hold, exercise and enjoy the same respectively from the time of such election, for and during the space of one year, and until other fit persons shall be elected and chosen in their respective places, according to the laws and regulation aforesaid; and in case any of the said persons by these presents nominated and appointed to the respective offices aforesaid, or who shall hereafter be elected and chosen thereto respectively, shall die, or on any account be removed from such offices respectively, before the time of their respective appointed services shall be expired, or refuse or neglect to act in, and execute the office for which he or they shall be so elected and chosen, or is or are herein nominated or appointed, that then, and in any and every such case, it shall and may be lawful for the members of our said body corporate hereby erected, to meet at such time and times, and at such place and places within our said city of New-York, and upon such notices or summons as shall for that purpose be established and directed by the bye-laws or regulations of our said body corporate, and there by the majority of such of them as shall so meet, elect and choose other or

others to the said offices respectively, in the place of him or them so dying, removing, neglecting or refusing to act in manner and form, and after the same method to be observed in the annual elections of the like offices respectively, by virtue of these our letters patent, and the said bye-laws or regulations of our said corporation, hereby giving and granting that such person or persons as shall be so elected and chosen, by the majority of such of the said members as shall meet in manner aforesaid, shall have, hold, exercise and enjoy, such the office or offices to which he or they shall be so elected and chosen, from the time of such election, until the first Tuesday in May the next ensuing, and until other or others be legally chosen in his or their place and stead, as fully and amply, to all intents and purposes whatsoever, as the person or persons in whose place he or they shall be chosen, might or could have done by virtue of these presents; and our will and pleasure is, and we do hereby, for us, our heirs and successors, ordain, direct and require, that every president, vice-president, treasurer and secretary, to be elected by virtue of these presents, shall, before they act in their respective offices, take an

Officers elected to be sworn to the faithful execution of their office.

oath or affirmation, to be to them administered by the president, or in his absence, by one of the vice presidents of the preceding year, who are hereby authorised to administer the same, for the faithful and due execution of their respective offices during their continuance in the same respectively; and we do further for us, our heirs and successors, give and grant to the corporation of the chamber of commerce, in the city of New-York, in America, and their successors forever, that besides the annual meeting of our said corporation herein before directed and appointed to be held on the first Tuesday in May in every year, it shall and may be lawful for them, their heirs and successors forever hereafter, for promoting and carrying into execution the laudable intents and designs aforesaid, and for the transacting the business and concerns of our said

Besides the annual meetings, the corporation may meet on the first Tuesday in every month.

corporation, to meet together on the first Tuesday in every month for ever, at such place or places in our said city of New-York, as shall for that purpose be established, fixed, ascertained and appointed by the bye laws and regulations of our said corporation; and that the members of our said corporation being so met, or so many of them in number at the least, as shall by the bye-law or ordinances of our said corporation be for that purpose from time to time established, directed, ordained or appointed, shall, together with the president or any one of the vice presidents of our said corporation for the time being be a legal meeting of our said corporation; and they or the major part of them so met, shall have full power and authority to adjourn from day to day, or for any other time, as the business of our said corporation may require, and to do, execute and perform all and every act and acts, thing and things whatsoever, which the said corporation of the chamber of commerce

Powers of the corporation.

in the city of New-York, in America, are or shall be by these our letters patent, be authorised to do, act or transact in as full and ample manner, as if all and every of the members of the said corporation were present; and that at any such legal meeting of the said corporation, they shall and may, in writing under the common seal, make, frame, constitute, establish and ordain from time to time and at all times hereafter, such laws, constitutions, ordinances, regulations and statutes, for the better government of the officers and members of the said corporation, for fixing and ascertaining the place of meeting of our said corporation as aforesaid, and for regulating a

other their affairs and business, as they, or the major part of them so legally met, shall judge best for the general good of the said corporation, and profitable for the more effectually promoting the beneficial designs of their institution; all which laws, constitutions, regulations, ordinances, and statutes so to be made, framed, constituted established and ordained as aforesaid, we will, command and ordain by these presents, for us, our heirs and successors, to be from time to time, and at all times hereafter kept, obeyed and performed in all things, as the same ought to be on the penalties and amerciaments in the same to be imposed and limited, so as the same laws, constitutions, regulations and statutes, be reasonable in themselves, and not repugnant or contrary to the laws and statutes of that part of our kingdom of Great-Britain called England, nor of our said province of New-York; and for the keeping up and preserving forever hereafter, a succession of members for the said corporation, our will and pleasure is, and we do hereby for us, our heirs and successors, ordain and give, and grant to the said corporation of the chamber of commerce in the city of New-York, in America, and their successors forever, that at any time of the stated legal meetings of the said corporation, to be held on the first Tuesday in every month forever hereafter, but at no other meeting of our said corporation, it shall and may be lawful for them, and their successors forever, to elect and choose in such manner and form, and upon such terms and conditions,

How new members
to be chosen.

as shall be directed, ordained and established for that purpose, by any of the said bye-laws, statutes, constitutions or ordinances of the said corporation, such and so many persons to be members of the said corporation as they shall think beneficial to the laudable designs of the said corporation; which persons and every of them, so from time to time elected and chosen, shall by virtue of these presents, and of such election, be vested with all the powers, authorities and privileges which any member of the said corporation is hereby invested with; and in case any extraordinary meeting or meetings of the said corporation shall at any time or times be judged necessary, for the promoting of the interest and business of the said corporation, We do hereby for us, our heirs and successors, will, declare and ordain, that it shall and may be lawful for our said corporation to meet from time to time, at such days and times, and at such places in our said city of New-York, and upon such notices or summons, as shall for that purpose from time to time be settled, established and ordained by the laws, ordinances or statutes of the said corporation; and that the members of our said corporation being so met, or so many of them in number at least, as by the said laws, ordinances and statutes aforesaid, shall from time to time be established, directed, ordained and appointed for that purpose, shall, together with the president or one of the vice-presidents of the said corporation for the time being, be a legal meeting of the said corporation; and they or the major part of them so met, shall have full power and authority to act, transact, do and perform all and singular whatsoever may be transacted, done and performed, at any the hereby stated meetings aforesaid of the said corporation, saving and except the electing members, making laws, ordinances and statutes, and disposing of the real estates of the said corporation; and our will and pleasure is, that until the same shall be otherwise regulated as aforesaid, that the meetings of the said corporation shall be held in the great-
Where the meet-
ings are to be held. room of the building, commonly called the Exchange, situate at the lower end of the street called Broad-street, in the said city of New-York; and that until the same shall be also otherwise regulated as aforesaid,

that no act done in any meeting of the said corporation shall be legal, good or valid, unless the president or one of the vice-presidents, and twenty others of the members of the said corporation at the least, be present, and the major part of them consenting thereto; and we do further give and grant to the said corporation of the chamber of commerce in the city of New-York, in America, that it shall and may be lawful for the president of the said corporation at all times hereafter forever, to

The president or a vice-president, and 20 members to compose a legal meeting.
Door-keepers, messengers, and other inferior officers, to be appointed by the president.

appoint a door-keeper, one or more messenger or messengers, and all such other inferior officers as shall by him be thought necessary for the said corporation, and to displace them and any and every of them, at his will and pleasure; Provided nevertheless, That no such door-keeper, messenger or other officer, shall hold his or their office or offices, by virtue of any such appointment, longer than until the then next lawful meeting of the said corporation, unless such person or persons so appointed, shall be then approved of by the majority of such of the members of the said corporation as shall then be met; and we do further, of our especial grace, certain knowledge and mere motion, for us, our heirs and successors, grant and ordain, that when and as often as

Officers of the corporation misbehave themselves,

the president or any vice-president, treasurer or secretary of the said corporation, shall misdeemean himself in his or their said offices respectively, and thereupon a complaint or charge in writing shall be exhibited against him or them by any member of the said corporation, at any legal meeting or meetings of the said corporation; that it shall and may be lawful for the members of the said corporation then met, or the major part of them, from

How to be proceeded against.

time to time, upon examination and due proof, to suspend or discharge such president, vice-president, treasurer or secretary from their offices respectively, although the yearly or other time for their respective services shall not be expired; any thing before in these presents contained to the contrary thereof, in any wise notwithstanding. And further, We do by these presents, for us, our heirs and successors, give and grant unto the said corporation of the chamber of commerce in the city of New-York, in America, and their successors forever, that this our present charter shall be deemed, adjudged and construed in all cases most favourably, and for the best benefit and advantage of our said corporation, and for promoting the good intentions and designs herein before expressed, inducing us graciously to grant the same; and that this our present grant being entered on record as herein after is expressed, or the enrollment thereof, shall be forever hereafter good and effectual in law, according to our true intent and meaning herein before declared, without any other licence, grant or confirmation from us, our heirs and successors hereafter, by the said corporation to be had or obtained, notwithstanding the not reciting or misrecital, or not naming or misnaming of the aforesaid offices, franchises, privileges, immunities, or other the premises, or any of them; and although no writ of ad quod damnum, or other writs, inquisitions or precepts, hath been upon this occasion, had, made, issued or prosecuted; any statute, act, ordinance or provision or other matter, or any thing to the contrary thereof, in any wise notwithstanding. In testimony whereof, we have caused these our letters to be made patent, and the great seal of our said province to be hereunto affixed, and the same to be entered on record in our secretary's office for our said province, in one of the books of patents there remaining. Witness, our trusty and well-beloved Cadwallader Colden, Esquire, our lieutenant-governor and commander in chief of our said pro-

vince of New-York, and the territories depending thereon in America, by and with the advice and consent of our council, for our said province, at Fort-George, in our city of New-York, this thirteenth day of March, in the year of our Lord one thousand seven hundred and seventy, and of our reign the tenth. By virtue whereof, the said John Cruger, and others of the city of New-York, merchants, therein named, and their successors, did hold, exercise and enjoy, all and singular the rights, privileges, franchises, powers, and immunities therein particularly mentioned and granted.

Preamble,
Reciting the interrup-
tion of the exercise of
the charter rights.

And whereas during the late war and public calamities, the exercise and enjoyments of the said rights, privileges, franchises and immunities, hath been for a long time interrupted and suspended, by means whereof doubts have arisen, whether the said rights, privileges, franchises and immunities can be legally resumed, held, exercised or enjoyed. And whereas Samuel Broome, Jeremiah Platt, John Broome, Benjamin Ledyard, Thomas Randall, Robert Bowne, Daniel Phoenix, Jacob Morris, Eliphalet Brush, James Jarvis, John Blagg, Viner Van Zandt, Stephen Sayre, Jacobus Van Zandt, Nathaniel Hazard, Thomas Hazard, Abraham P. Lott, Abraham Duryee, William Malcom, John Alsop, Isaac Sears, James Beekman, Abraham Lott, Comfort Sands, Joseph Blackwell, Joshua Sands, Lawrence Embree, George Embree, Gerardus Duykinck, junior, Cornelius Ray, Anthony Griffiths, Thomas Tucker, John Berrian, Isaac Roosevelt, John Franklin, John H. Kipp, Henry H. Kipp, Archibald Currie, David Currie and Jonathan

And petition for a re-
vival of the corpora-
tion.

Lawrence, all of the said city, merchants, have by their humble petition set forth, that the said letters patent, and the powers and privileges exercised and enjoyed under the same, have greatly promoted the commercial interests of this state, and that great and daily inconveniences and injury are suffered by the suspension thereof, and have prayed, that the said letters patent, with all and singular the powers and franchises therein contained, may be revived, confirmed and established :

I. Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,

Charter confirmed.

That the said letters patent, and all and singular the powers, rights, privileges, franchises and immunities, therein and thereby granted, shall be, and the same are hereby ratified and confirmed, and the said letters patent, and all and every their former rights, privileges, franchises and immunities, therein and thereby granted, shall be and remain in full force and efficacy, notwithstanding any non-user, or mis-user, of any of the said powers, rights, privileges, franchises and immunities heretofore had, committed, done or suffered, between the nineteenth day of April, one thousand seven hundred and seventy-five, and the day of the passing of this act; and that the said Samuel Broome, Jeremiah Platt, John Broome, Benjamin Ledyard, Thomas Randall, Robert Bowne, Daniel Phoenix, Jacob Morris, Eliphalet Brush, James Jarvis, John Blagg, Viner Van Zandt, Stephen Sayre, Jacobus Van Zandt, Nathaniel Hazard, Thomas Hazard, Abraham P. Lott, Abraham Duryee, William Malcom, John Alsop, Isaac Sears, James Beekman, Abraham Lott, Comfort Sands, Joseph Blackwell, Joshua Sands, Lawrence Embree, George Embree, Gerardus Duykinck, junior, Cornelius Ray, Anthony Griffiths, Thomas Tucker, John Berrian, Isaac Roosevelt, John Franklin, John H. Kipp, Henry H. Kipp, Archibald Currie, David Currie, and Jonathan Lawrence, and their successors, shall and may forever hereafter remain, continue

Members of the pre-
sent chamber of com-
merce.

Notwithstanding any non-user between the 19th April, 1775, and the date of this act.

and be a body corporate, and politic, in deed, fact and name, by the name of, The corporation of the chamber of commerce of the state of New-York, and by that name, to sue, plead and be impleaded, and to answer and to be answered.

II. And be it further enacted by the authority aforesaid, That the said John Alsop, shall be the present president, the above named Isaac Sears, the present vice-president, the above named John Broome, the present treasurer, and the above named John Blagg, the present secretary of the said corporation, who shall hold, possess and enjoy, their said respective offices until the first Tuesday in May, now next ensuing; and in case any or either of the said persons hereby nominated and appointed to the respective offices aforesaid, shall happen to die, or shall neglect or refuse to act in, or execute, or shall be removed from such office or offices respectively, before the said first Tuesday in May next, that then, and in every such case, it shall and may be lawful for the members of the said body corporate, to meet at such time and times, and at such place and places within the said city, as they shall for that purpose appoint, and upon such notices or summons as have heretofore been used and established by the said body corporate, and then and there by the majority of such as shall so meet, to elect and choose other or others to the said office or offices respectively, in the place of him or them so dying or neglecting, or refusing to act, or being removed in the manner heretofore used in the annual elections of the like officers; which person or persons so elected and chosen, shall enjoy and exercise the said office or offices, and all and singular the privileges and powers thereto belonging or appertaining, until the said first Tuesday in May next.

III. And be it further enacted by the authority aforesaid, That the corporation of the chamber of commerce of the state of New-York, and their successors, shall and may, forever hereafter, peaceably have, hold, use and enjoy, all and every the rights, powers, liberties, privileges, franchises, usages, lands, tenements, estates and hereditaments, which have heretofore by virtue of the above recited charter, been given or granted unto the said corporation, by the name of, The corporation of the chamber of commerce of the city of New-York, in America.

All former rights to be enjoyed by the present corporation.

C H A P. XXXI.

An ACT for the Regulation of Pilots and Pilotage for the Port of New-York, and for other Purposes therein mentioned.

Passed 14th April, 1784.

WHEREAS the safety of the navigation to and from the port of New-York, will be much promoted by the establishment of proper regulations for the pilots, and of their rates of pilotage.

I. Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,

That it shall and may be lawful to and for his excellency the governor, or person administering the government of the state for the time being, by and with the advice and consent of the council of appointment, to appoint, as often and from time to time, as to such council shall seem necessary, one fit and proper person to be master and three or more fit and proper persons to be wardens of the said port of

Council of appointment to appoint master and wardens.

New-York, who shall be called, The master and wardens of the port of New-York; and in like manner to appoint and commission

And branch pilots.

And each pilot may appoint a deputy.

a sufficient number of persons to be branch pilots of the said port, each of whom are empowered to appoint one deputy under him: Provided, That no person shall hereafter be commissioned as a branch pilot, or appointed a deputy pilot, until he shall have been examined before, and obtained a certificate from the master and wardens of the said port, or any three or more of them, under their hands and seals, of his being duly qualified for such office, and if any person not so commissioned or appointed, shall pilot any ship or other vessel going into or out of the said port, from or to Sandy-Hook, when a branch or deputy pilot offers, such person shall forfeit and pay the sum of five pounds.

II. *And be it further enacted by the authority aforesaid,*

A pilot or deputy not aiding ships in distress, to forfeit his office or pay a fine.

That if any branch pilot or his deputy, shall neglect or refuse to give all the aid and assistance in his power, to any ship or other vessel appearing in distress on the coast, or in want of a pilot, such branch pilot or deputy, shall either forfeit his or their branch deputation, or pay a fine not less than five pounds, nor more than twenty pounds, at the discretion of the master and wardens aforesaid, or any three or more of them; which said master and wardens, or any three or more of them, are hereby empowered to impose such fine, to suspend any of the said pilots or deputies for such offence, until the pleasure of the council of appointment shall be known; and further, by and with the consent and approbation of the governor, or person administering the government of the state for the time being, to make and establish such prudential regulations and orders

Master and wardens to make regulations for government of pilots.

for the better government of the said pilots, as they shall from time to time judge to be useful and necessary, and the same to revoke, alter and amend as in their opinion will most effectually promote the good purposes for which this act is intended; and for the better observance of such rules and orders as from time to time may be made and published, the said master and wardens,

And impose fines for breach of them, not exceeding ten pounds.

or any three or more of them, are hereby further empowered to impose and lay any fine or fines for the breach of any such rules and orders, to be made and published as aforesaid, upon the said pilot or pilots so to be commissioned or appointed as aforesaid, for any sum or sums not exceeding ten pounds.

III. And for the encouragement of such pilots, who shall distinguish themselves by their activity and readiness to aid and assist any ship or vessel appearing in distress, and in want of a pilot on the coast: *Be it further enacted by the authority aforesaid,* That the master or owners of such ship or vessel, shall pay unto such pilot or deputy, who shall have exerted himself for the preservation of such ship or vessel in manner aforesaid, such sum for extra services as the said master or owner, and pilot or deputy can agree upon; and in case no such agreement can be made by the parties, the master and wardens, or any three or more of them, are hereby empowered to ascertain what in their opinion is a reasonable reward; which sum shall be collected in the manner by this act directed for the collection of pilotage.

IV. *And be it further enacted by the authority aforesaid,*

Where pilots are allowed six shillings for every foot of water that vessels draw, between 15th March and 1st of December, &c.

That it shall and may be lawful for every pilot, commissioned and appointed as is herein before directed, to ask, demand and receive, of and from any person or persons, who shall employ him to pilot any ship or other vessel, from the

eastward of the False-Hook to the port of New-York, or from the port of New-York to the eastward of the False-Hook, so far that such vessel may proceed safely from thence to sea, between the fifteenth day of March and the first day of December, in any year, pilotage at the rate of six shillings for every foot of water such ship or other vessel shall draw. Provided always, That no more than half pilotage, at the rate aforesaid, shall be demanded or received by any such pilot, who shall to the westward of the False-Hook, take charge of any ship or other vessel coming to the port of New-York; and that between the first day of December and the fifteenth

Pilotage between 1st
December and 15th
March.

day of March, inclusive, in any year, such pilot may demand and receive the additional sum of twenty shillings, for any ship or other vessel drawing ten feet water or upwards, and for every ship or other vessel drawing less than ten feet water, the additional sum of ten shillings; and for every ship or other vessel which such pilot shall conduct clear of the middle ground out to sea, the additional sum of ten shillings, if such ship or other vessel shall draw ten feet water or under, or the additional sum of twenty shillings, if such ship or other vessel shall draw upwards of ten feet water; and for every day that such pilot shall be required to remain or be detained on board by the master, waiting for a fair wind or otherwise, such pilot is hereby authorised to ask, demand and receive, and shall be paid the sum of ten shillings.

Masters and wardens
not to be concerned
in pilot boats or with
pilots.

V. And to the end that the said master and wardens may be disinterested and impartial directors as by this act is intended: *Be it further enacted by the authority aforesaid*, That neither of them so long as they shall be employed in this trust, shall be directly or indirectly concerned in any pilot boat, or with any person whatsoever commissioned as a branch pilot.

VI. *And be it further enacted by the authority aforesaid*, That every branch pilot or deputy pilot of the port of New-York, commissioned or appointed, or hereafter to be commissioned or appointed by virtue of this act, shall, before he takes upon himself, the execution of the office, enter into a recognizance to the people of the state of New-York, before one of the judges of the supreme court, or the mayor or recorder of the city of New-York, with two sufficient sureties, to be approved by the master and wardens of the port, or any three or more of them, in the sum of one hundred pounds lawful money of New-York, with condition, that such pilot or deputy pilot, shall and will, in all things, diligently and faithfully perform and execute the trust reposed in him, as a pilot or deputy pilot (as the case may be) according to the directions and true intent and meaning of this act, and according to the rules and orders of the said master and wardens of the port of New-York, or any three or more of them; and on failure or non-performance of the condition of any such recognizance, the same shall and may, at the request of any person injured or aggrieved thereby, be sued and prosecuted, either in the supreme court, or in the mayor's court of the said city; and if judgment shall be obtained against the defendant or defendants on such recognizance, the court in which such judgment shall be had, shall, by imprisonment of such defendant or defendants, or by execution or executions, by *fiery facias*, or *levari facias*, cause the amount of such recognizance with costs of suit to be levied and paid, and by an order to be entered in the minutes of the said court, direct the amount of such recognizance to be paid to the said master and wardens; and the said master and wardens, or any three or more of them, are in such case authorised and required to take cognizance of the

damages sustained by such person injured and aggrieved, and award the amount or value of the same, and to apply the monies which they shall have received from such forfeited recognizance, or so much thereof as may be necessary to pay the damages so awarded, and shall make report in writing by them subscribed, of the damages so awarded and paid, to the court in which such judgment shall have been obtained. Provided always, That if the branch or deputy pilot so offending, do, before judgment shall have been obtained against him, for the breach of his recognizance, pay to the party aggrieved such damages as shall be assessed or awarded by the said master and wardens, or any three or more of them, and discharge all costs of suits at the time of such payment accrued, the suit and proceedings on such recognizance shall be discontinued.

VII. And be it further enacted by the authority aforesaid, That every branch pilot, commissioned as aforesaid, shall be no longer a branch pilot than he continues to be, bona fide, the owner or part owner of a pilot boat, and does keep such boat really and only employed in service as a pilot boat; and in case any such branch pilot shall sell or dispose of his property in such pilot boat (not having then another pilot boat in service) or shall employ such pilot boat, or suffer her to be employed in any other service than that of a pilot boat, such branch pilot shall thereby forfeit his branch, and by the master and wardens of the port, or any three or more of them, be suspended as aforesaid from his office of branch pilot.

VIII. And be it further enacted by the authority aforesaid, That the master and wardens of the port of New-York, for the time being, shall be, and they or any two or more of them, are hereby appointed surveyors for the surveying of damaged goods which shall be brought into the port of New-York, in any ship or other vessel; and in like manner with the assistance of one or more skilful carpenter or carpenters, to be surveyor of any vessel or vessels that may be deemed or thought unfit to proceed to sea; and the said master and wardens, or any two or more of them, shall thereupon give certificates under their hands and seals, how the goods or vessels surveyed, appeared to them, and shall cause an entry thereof to be made in a book, to be kept in their office for that purpose, for which certificate and entry their clerk shall be entitled to a fee of ten shillings, and no more, and the master and wardens shall be allowed at the rate of twenty shillings for each day, and in that proportion for the one half or the one fourth part of a day, and any survey of goods or vessels performed or made in any other manner than is herein directed and prescribed, shall not be valid or authentic.

IX. And be it further enacted by the authority aforesaid, That before the master or wardens enter upon the execution of their said offices, they shall severally take an oath before the mayor of the city of New-York, for the time being, in the words following, that is to say,

Oath of the master and wardens. **I** will, well, truly and impartially, according to the best of my skill and understanding, execute the powers vested in me, by virtue of a law of this state, entitled, *An act for the regulation of pilots and pilotage for the port of New-York, and for other purposes therein mentioned.* So help me God.

X. And be it further enacted by the authority aforesaid, That the master and wardens of the port of New-York, shall keep an office in the city of New-York, and provide

Master and wardens keep an office and clerk, who is to

receive the pilotage money.

and keep a clerk, and a proper book or books, and therein shall cause regular and fair entries to be made of all their transactions and proceedings by virtue of this act, to which all persons may have recourse; and the clerk so by them to be appointed, is hereby empowered to receive all pilotage money, which shall from time to time become due to any of the pilots or deputy pilots by virtue of this act, and on neglect or refusal of payment, to sue and prosecute in his own name for the recovery of the same, before the mayor or recorder, or any one of the aldermen of the city of New-York, who are hereby respectively empowered to hear and determine the same in a summary way, and to award execution for the sum or sums adjudged, with costs of suit, and such clerk shall keep a separate and distinct account with each and every of the said pilots, of all the monies he shall and may receive to their use respectively, and once in every three months shall pay the same to them severally, retaining three per cent for his trouble in the premises; and all fines and forfeitures that shall arise by virtue of this act, except the forfeited recognizances of pilots or deputy pilots shall be sued for and recovered by, and in the name of the said clerk, in manner aforesaid, and any such suit shall not discontinue or abate by the decease, resignation or removal from office of such clerk; and all such fines and forfeitures, and the sum or sums recovered on any such forfeited recognizance, and not applied in discharge of damages as aforesaid, shall be paid to the said master and wardens, and be by them applied towards defraying the necessary expences they shall be put to, in executing and discharging the trusts hereby reposed in them; and every such clerk is hereby directed and required to enter into bond with sufficient surety or sureties to the said master and wardens, in the sum of five hundred pounds, with condition, that he will well and faithfully discharge the trusts reposed in him by this act.

Bond to be entered into by the clerk.

Pilotage of vessels outward bound, how to be paid.

XI. *And be it further enacted by the authority aforesaid* That the pilotage for any vessel outward bound, shall be paid or secured to be paid to the said clerk, for the use of the pilot who shall take charge of the vessel, before such vessel shall break ground in the port of New-York, and if the pilot for whose use such pilotage money shall have been paid or secured to be paid, shall neglect or fail in doing his duty in piloting such vessel, the pilotage money paid shall be restored to the payer, or the security given be cancelled and become void, as the case may happen to be.

Pilots carried to sea to be allowed mate's wages.

XII. *And be it further enacted by the authority aforesaid* That if any vessel going out of the port of New-York, shall carry off to sea, through the default of the master or owner of such vessel, any pilot or deputy pilot, when a boat is attending to receive such pilot or deputy pilot from on board of such vessel, the master or owner of such vessel shall pay to the master and wardens of the port of New-York for the use of such pilot or deputy pilot, besides the pilotage of such vessel the like wages per month until he shall return to the port of New-York, the monthly wages allowed to the mate of such vessel: Provided, That such pilot or deputy pilot shall have performed the duties required of him by this act: And provided also, That such pilot, or deputy, shall, as far as in his power, perform the usual duties of a seaman on board of such vessel after being so carried off; and if any money shall have been advanced or paid to such pilot by the master or owner of, or factor for such vessel, the same shall be credited and deducted from the monies to be paid to the clerk of the master and wardens, for the use of such pilot or deputy pilot.....

The council of appointment may appoint branch pilots for the channel of the East river.

XIII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for his excellency the governor, or person administering the government of this state for the time being, by and with the advice and consent of the council of appointment, from time to time during the continuance of this act, to appoint and commission so many branch pilots as by them shall be thought necessary for the safe pilotage of vessels which may require the same, to and from the port of New-York, through the channel of the East-river or sound, commonly called Hell-Gate; and the said master and wardens shall establish the rates of pilotage and make from time to time such rules and regulations for the ordering and directing the said pilots, as shall be by them judged necessary and expedient.

Master and wardens shall establish the rates of pilotage, &c.

XIV. And as the said master and wardens must necessarily give attendance to the duties of their office; *Be it further enacted by the authority aforesaid,* That either of them respectively, shall not be liable to serve as a grand or petit juror, during his continuance in the said office.

A whale-boat to be kept at Sandy-Hook.

XV. *And be it further enacted by the authority aforesaid,* That the branch pilots and deputy pilots of the port of New-York, shall keep, and they are hereby required to keep, at their joint expence, a good and sufficient whale-boat at Sandy-Hook, furnished with a sufficient number of oars, and in good repair; that such whale-boat shall be ready at Sandy-Hook, and furnished as aforesaid, on or before the first day of October next; and that the clerk of the said master and wardens shall retain in his hands, out of the monies for pilotage that shall become due to the said pilots and deputy pilots, a sum sufficient to pay for such boat, and shall therewith pay for the same; and shall from time to time in like manner, retain monies sufficient to keep the said boat in repair, and furnished as aforesaid.

Masters of vessels refusing to take pilots on board, to pay half pilotage.

XVI. *And be it further enacted by the authority aforesaid,* That if the master of any ship or vessel coming to the port of New-York, shall refuse to receive on board, and employ a pilot, the master or owner of such vessel shall pay to such pilot who shall have offered to go on board, and take charge of the pilotage of such vessel, half pilotage from the place at which such pilot shall have offered himself, to the said port of New-York.

XVII. *And be it further enacted by the authority aforesaid,* That the master and wardens of the port of New-York, shall furnish every pilot and deputy pilot with printed instructions, to be shewn and delivered by such pilot or deputy pilot to the master or commander of every vessel, as soon as he shall go on board to take charge of such vessel to pilot her into the said port, which instructions shall be strictly observed by every branch pilot or deputy pilot, and master of a vessel, at their perils respectively.

XVIII. And whereas it may happen by decease, removal or otherwise, in the recess of the council of appointment, that the number of pilots necessary for the port of New-York may be so reduced as to occasion much inconvenience to the trade of the state; For remedy whereof, *Be it further enacted by the authority aforesaid,* That the master and wardens of the said port, or any three or more of them, are hereby-empowered on such peculiar occasions as aforesaid, by warrant or warrants under their hands and seals, to employ such person or persons, qualified as herein before directed, to act as pilots for any term not exceeding six months from the day of the

date of such warrant; and every person so employed as a pilot by such warrant, shall during such time of employment, be subject to the like rules, orders and regulations, and liable to the like fines, penalties and forfeitures, as other pilots who shall be appointed in virtue of this act.

C H A P. XXXII.

An ACT to establish the Rates of Wharfrage and Cranage within the City of New-York.

Passed 17th April, 1784.

WHEREAS it hath been found by experience, that the wharfs fronting the East and Hudson's rivers in the city of New-York, have conducted to the increase and advantage of trade and navigation to and from the said city, in the lading and unlading of ships and other vessels: And for as much as the owners and proprietors thereof have been at a very great expence, not only in the making, erecting and building, but also in maintaining and keeping the same from time to time in good and sufficient repair, to answer the purposes aforesaid;

I. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That it shall and may be lawful, to and for the present owners and proprietors of the said mentioned wharfs, or the owners or proprietors thereof for the time being, to ask, demand, take and receive to and for their several and respective uses, for all ships and vessels using, or that shall use the same, from and after the passing hereof; that is to say, For each ship or other vessel, of the burthen of sixty tons, and under the burthen of one hundred tons, at and after the rate of three shillings per day; for every ship or other vessel, of the burthen of one hundred tons, and under the burthen of two hundred tons, at and after the rate of four shillings and six pence per day; for every ship or other vessel, of the burthen of two hundred tons, and under the burthen of three hundred tons, at and after the rate of five shillings per day; for every ship or other vessel, of the burthen of three hundred tons, and under the burthen of five hundred tons, at and after the rate of six shillings per day; and for every ship or other vessel, of the burthen of five hundred tons and upwards, at and after the rate of seven shillings and six pence per day, lawful money of this state, for every day that such ships or vessels respectively, shall use and be made fast to any of the wharfs herein before mentioned. Provided always, That nothing in this act contained, shall

Not to extend to vessels employed between one port and another in this state.

be construed, deemed or taken to establish a rate of wharfrage for vessels employed between one port and another within this state; and that the master or owners of such vessels and owners of wharfs, may adjust the wharfrage to be paid for such last mentioned vessels, on such terms as they may from time to time mutually agree upon; and in case of a difference between the master of any such vessel last mentioned, and the owner or owners of any wharf, the same shall be determined by the master and wardens of the port of New-York, whose decision shall be final.

II. *And be it further enacted by the authority aforesaid,* That in case any difference or dispute shall happen between the proprietor or proprietors, wharfinger or wharfingers of any of the wharfs aforesaid, and the master, commander, owner or agent of any ship or other vessel, concerning the burthen of such ship or other

Disputes about wharfrage, how to be settled.

vessel, in order to ascertain the rate of wharfage as herein before established, that in such case, and in all such cases, as often as the same shall so happen, upon the application of either of the parties to the master and wardens of this port, the said master and wardens, or any one of them, are hereby required and authorised to decide such difference and dispute, by proceeding to measure such ship or vessel, or in such other manner as in the opinion of the said master and wardens, or of any one of them, can be most conveniently and accurately performed, and shall, if required by either of the parties, give a certificate in writing by him or them, with his or their names subscribed, expressing the tonnage of such ship or other vessel according to his or their determination, which shall be final with respect to the rate of wharfage thereof, and in all such cases the expences thereof, which shall not exceed the sum of ten shillings, shall be paid by the party against whom such determination as aforesaid, shall be given.

III. *And be it further enacted by the authority aforesaid,* That every ship or other vessel, which at any time after the passing hereof, shall only lie fast to any or either of the said wharfs, shall be obliged to remove off from thence in order to make room for and suffer any other ship or vessel to load, unload or careen thereat; and on refusal or failure so to do, after notice and request thereof, to the master or commander, or to any one of the owners of such ship or other vessel, he or they shall forfeit and pay to the owner or owners of the said wharf, the sum of five pounds.

IV. *And be it further enacted by the authority aforesaid,* That all and every ship or other vessel, that shall make fast to any other ship or vessel, that shall or may be fastened to any or either of the said wharfs, and shall continue so to lie fastened, or shall so load, unload or careen, shall be subject and liable to pay, and shall pay, the one half of the rate that such ship or other vessel would have been liable to pay, in case they were fastened to any or either of the said wharfs, and there loaded, unloaded or careened.

V. *And be it further enacted by the authority aforesaid,* That all coasting vessels lying fast at any or either of the said wharfs, and not being actually loading, unloading or careening, shall, on request, be made loose and moved off to make room for, and suffer any sea vessel or vessels, paying a higher rate, to be brought in her or their place or places; and that on neglect or refusal so to do, the master, commander or owner of every such coasting vessel or vessels, shall pay such rate or rates as the sea vessel or vessels would have been liable to pay, which really and bona fide was, or were intended to have been there loaded, unloaded or careened.

VI. And whereas it may be difficult as well as inconvenient for the owners and proprietors of the several wharfs aforesaid, personally to attend, collect and receive the rates due, and to become due for wharfage of ships and other vessels; *Be it therefore enacted by the authority aforesaid,* That it shall and may be lawful for any owner or owners of the said wharfs for the time being, to appoint a proper and fit person to be the wharfinger or overseer thereof, for and during his or their will and pleasure, and shall and may, at his and their like will and pleasure, displace and remove such person so appointed, and other or others in his and their room and stead, when, and as often as to him or them shall seem meet, to appoint; and such person so appointed wharfinger, shall, while he continues in that office, have the power of regulating and

Wharfingers, how to be appointed.

Their powers.

Vessels only lying fast to wharfs, to remove for the unloading of others.

14th sect. ch. 28.

On penalty of 5l.

Where half wharfage is to be paid.

ordering of the wharf he shall be so appointed for as aforesaid, and of the births of all such ships and other vessels, as shall load, unload, careen or fasten to the same; and moreover, shall have full power and authority, either in his own name or in the name or names of the owner or owners, or proprietors of such wharf or wharfs, to ask, sue for, demand and receive, the wharfage thereof as it shall become due.

VII. *And be it further enacted by the authority aforesaid,* That the master or commander, owner or owners of any vessel using any of the wharfs mentioned in this act, and in case of his or their absence out of the state, his or their agent or agents, factor or factors, to whom such vessel shall be consigned or addressed, shall be liable to pay the sum due for the wharfage of such vessel, after the rates established in and by this act, either to the owner or owners of such wharf, or to the wharfinger in behalf of such owner or owners: Provided, That such factor or factors, agent or agents, shall be liable to pay the same, only where an account shall have been delivered to, or in case of the absence of such factor or factors, agent or agents, left at his or their last usual place of abode, and the money there demanded before the sailing or departure of such vessel from port; any thing herein to the contrary in any wise notwithstanding.

VIII. And whereas the wharfs before-mentioned, are often incumbered by lumber, mill-stones or other merchandize, and by means thereof the loading and unloading of vessels is much incommoded, and the passing and repassing of carts and carriages is very much impeded, retarded and hindered; *Be it therefore enacted by the authority aforesaid,* That if any or either of the said wharfs, shall at any time or times hereafter be so incumbered, as to subject the same to any or either of those inconveniences, the owner or wharfinger of such wharf or wharfs respectively for the time being, shall either personally notify, or by notice in writing, to be left at the place of residence of the owner or owners of such lumber or other goods, his or their factor or factors, require him or them to remove the same from thence, within a reasonable time; and if the same shall not be removed accordingly, the owner of the said wharf or wharfinger, is hereby empowered to remove the same, and keep them in his custody until the whole charges attending the removal, and also the storage of such goods be paid by the owner or claimer thereof; and in case the owner of such goods, or his factor, is not to be found in the city of New-York, the owner of the said wharf or wharfinger may at his discretion remove the said goods as herein before directed.

IX. *Provided always, and be it enacted by the authority aforesaid,* That nothing herein contained shall impair the right which the mayor, aldermen and commonalty of the city of New-York, have to docks and slips herein before mentioned; but that the same shall be saved to them and their successors as fully as if this act had not been made.

X. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful, to and for the owner and owners respectively of every crane, that now is or hereafter shall be made, erected and built, on any or either of the wharfs aforesaid, or any part thereof, to ask, demand, take and receive, for his and their several and respective use and uses, from the master, commander or owner of any ship or other vessel that shall employ such crane or cranes, the rates following; that is to say, For taking out and putting in the mast of every sloop of the burthen of eighty tons, or upwards, the sum of

Master, owner, agent,
or factor to pay the
wharfage, &c.

Lumber to be re-
moved from wharfs,
24th sect. ch. 28.

forty shillings; and for taking out or putting in the mast of any sloop of eighty tons or upwards, twenty-five shillings, for taking out and putting in the mast of any square rigged vessel of the burthen of two hundred tons and upwards, the sum of thirty shillings; and for taking out and putting in the mast of any square rigged vessel or schooner under the burthen of two hundred tons, twenty-five shillings; for taking out or putting in the mast of any square rigged vessel of the burthen of two hundred tons or upwards, the sum of twenty-five shillings; and for taking out or putting in the mast of any square rigged vessel or schooner under the burthen of two hundred tons, twenty shillings, lawful money aforesaid.

C H A P. XXXIII.

An ACT for making such Alterations in the Charter of the Corporation of Trinity Church as to render it more conformable to the Constitution of this State.

Passed 17th April, 1784.

Preamble,

Reciting the stile of the corporation in their charter, dated May 6, 1697.

Name altered, 11th 18th. ch. 66.

That parts of the charter are inconsistent with the constitution of this state.

WHEREAS by letters patent under the great seal of the then colony, and now state of New-York, bearing date the sixth day of May, in the year of our Lord one thousand six hundred and ninety-seven, many of the inhabitants of the city of New-York, members of the church of England, were erected into a corporation, by the name and stile of, The rector and inhabitants of the city of New-York, of the protestant church of England, as by law established: And whereas on the twenty-seventh day of June, in the year of our Lord one thousand seven hundred and four, the legislature of the then colony, and now state of aforesaid, did pass a law, entitled, An act for granting sundry privileges and powers to the rector and inhabitants of the city of New-York, in communion of the church of England, as by law established: And whereas those parts of the said charter which render necessary the induction of a rector to the said church by the governor, according to such instructions as he shall, from time to time, receive from his Britannic majesty, and such other parts of the said charter and law as admit and acknowledge that rights exist in the bishop of London, in and over the said church, are inconsistent with the spirit and letter of the constitution of this state. And whereas certain other parts of the said charter and law, and of a certain other law passed the twenty-second day of September, in the year of our Lord one thousand six hundred and ninety-three, by the legislature of the then colony aforesaid, entitled, An act for settling a ministry, and raising a maintenance for them in the city of New-York, and county of Richmond, Westchester and Queen's county, are contradictory to that equality of religious rights which is designed to be established by the constitution of this state:

I. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,*

Part of the old charter, and law relating to the church, repealed.

That so much of the charter to the said body corporate above particularly mentioned, and so much of the said law first above particularly mentioned, as relate to the induction of the rector by the governor, to the powers or authority of the bishop of London, in and over the said corporation, and to the collecting and levying a sum of money upon the city of New-York, for the use of the rector or incumbent in the said law mentioned, be, and they are hereby re-

pealed and annulled; and that nothing in this law, nor no non-user or misuser, between the nineteenth day of April, one thousand seven hundred and seventy-five, and the passing of this law, shall be in any wise construed to annul, injure, repeal or make void, the said charter, or the said law first above particularly mentioned, where the same are not inconsistent with the constitution of this state.

II. *And be it further enacted, and it is hereby enacted by the authority aforesaid,* That the church-wardens and vestrymen of the said corporation, or a majority of them, be vetted with full powers to call and induct a rector to the said church, so often as there shall be any vacancy therein.

III. And whereas doubts have arisen on those parts of the said charter and law first above-mentioned, which speak of inhabitants in communion of the said church of England: For removal whereof, *Be it further enacted by the authority aforesaid,* That all persons professing themselves members of the episcopal church, who shall either hold, occupy or enjoy a pew or seat in the said church, and shall regularly pay to the support of the said church, and such others as shall in the said church partake of the holy sacrament of the Lord's supper, at least once in every year, being inhabitants of the city and county of New-York, shall be entitled to all the rights, privileges, benefits and emoluments, which in and by the said charter and law first above-mentioned, are designed to be secured to the inhabitants of the city of New-York in communion of the church of England.

Definition of persons who shall be entitled to all the rights of the corporation.

IV. And whereas by the events of war, and in consequence of the capture of the city of New-York by the troops of his Britannic majesty, many of the well-affected inhabitants of the said city, who by the said charter and law were entitled to vote for members of the said corporation, were prevented from the due exercise of their rights, and many others who remained in this city, were deterred from voting by well-grounded apprehensions of the forces of his Britannic majesty, then in possession of the said city: By reason whereof, no elections were held, but under the influence of the government of Great-

Definition of the due council respecting the officers.

† 31 Cl. ch. 28.

Britain, then at open war with this state: And whereas the council appointed by the act of the legislature, entitled, *† An act to provide for the temporary government of the southern parts of this state, whenever the enemy shall abandon or shall be dispossessed of the same, and until the legislature can be convened,* passed the twenty-third of October, one thousand seven hundred and seventy-nine, upon the petition of sundry persons, filing themselves members of the said church; and after a full hearing of certain other persons, claiming to be the church-wardens and vestrymen of the said church, reciting that there was, in the opinion of the council, reason to believe that the dissensions respecting the said church, might materially endanger the peace of the said city, did in effect, determine the said places of church-wardens and vestrymen to be vacant; and by their ordinance, dated the twelfth day of January, one thousand seven hundred and eighty-four, did vest the estate, real and personal, of the said corporation, in James Duane, Francis Lewis, Lewis Morris, Isaac Sears, William Duer, Daniel Dunscomb, Anthony Lispenard, John Rutherford, and William Bedlow, to be retained and kept by them, or any five of them, until such time as further legal provision should be made in the premises: And whereas it appears, that the following persons have been nominated and chosen by a very

The estate of the corporation vested in the persons.

respectable number of the members of the said corporation and society, as church-wardens and vestrymen, and by their humble petition have prayed, that the said persons may be appointed as such; *Be it therefore further enacted, and it is hereby enacted by the authority aforesaid,* That James Duane, and Robert R. Livingston, be the present church-wardens of the said corporation; and that Anthony Griffiths, Hercules Mulligan, Marinus Willett, John Stevens, Robert Troup,

Present church-wardens and vestrymen appointed.

Thomas Tucker, Joshua Sands, Richard Morris, Francis Lewis, Lewis Morris, Isaac Sears, Daniel Dunscomb, William Bedlow, William Duer, John Rutherford, Anthony Lispenard, Thomas Grennel, William Mercier, Thomas Tillotson and Christopher Miller, be the vestrymen of the said corporation; the said church-wardens and vestrymen to hold their places until the

Their continuance in office.

first usual day of election for church-wardens and vestrymen, which shall be held after Easter Sunday, which will be in the year of our Lord one thousand seven hundred and eighty-five, and that in the mean time, in case of any vacancy, by death or resignation of the

Vacancies how to be filled up.

rector, or either of the church-wardens or vestrymen, such vacancy to be filled up by the remaining church-wardens and vestrymen, in such manner as is prescribed in and by the charter and law constituting the said corporation as aforesaid.

V. *Provided nevertheless, and be it further enacted by the authority aforesaid,* That nothing in this act contained, shall be construed, deemed or taken, to prejudice or injure the right or title of any person or persons whatsoever, to any of the lands or tenements occupied or claimed by the corporation aforesaid.

VI. And in order fully to carry into full effect those parts of the constitution of this state, which declare, "That the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall, forever hereafter be allowed within this state to all mankind;" and that all acts of the legislature of this state, while a colony, and all parts thereof which may be construed to establish or maintain any particular denomination of christians, or their ministers, be abrogated and rejected as repugnant to the said constitution: And in order to remove all doubts which may

Preamble; reciting certain acts.

arise in the minds of any persons, with respect to the continuance, force and effect of a certain act of the legislature of this state while a colony, passed on the twenty-second day of September, one thousand six hundred and ninety-three, entitled, An act for settling a ministry, and raising a maintenance for them in the city of New-York, county of Richmond, Westchester and Queen's county; and also of one other act, passed on the twenty-seventh day of June, one thousand seven hundred and four, entitled, An act for granting sundry privileges and powers to the rector and inhabitants of the city of New-York, of the communion of the church of England, as by law established; and also of one other act, passed on the fourth day of August, one thousand seven hundred and five, entitled, An act for the better explaining and more effectually putting in execution an act of general assembly, entitled, an Act for settling a ministry, and raising a maintenance for them in the city of New-York, county of Richmond, Westchester and Queen's county; and also of one other act, passed on the twenty-seventh day of July, one thousand seven hundred and twenty-one, entitled, An act for the more equal and impartial assessing the minister, and poor's tax to be raised within the city and county of New York, Queen's county, Westchester county, and the county of Richmond; and also of one other act,

passed the twenty-first day of September, one thousand seven hundred and forty-four, entitled, An act to alter the time of electing vestrymen and church-wardens in Richmond county; and also certain parts of one other act, passed the twenty-ninth day of November, one thousand seven hundred and forty-five, entitled, An act to enable the inhabitants of the city of New-York, to choose annually, two vestrymen for each respective ward within the said

implying a pre-eminence of the church of England above others.

city; which do grant certain immunities, emoluments and privileges to the episcopal church, or that mode of religious worship commonly called the church of England, in the city and county of New-York, and the counties of Richmond, Queen's and Westchester, and do establish and maintain the ministers of that denomination within the said counties, and do also declare or imply a pre-eminence or distinction of the said episcopal church, or church of England, over all other churches, and other religious denominations;

Such acts repealed.

Be it therefore further enacted by the authority aforesaid, That the said acts for settling the ministry, and raising a maintenance for them in the city of New-York, counties of Richmond, Westchester and Queen's county, for granting sundry privileges and powers to the rector and inhabitants of the city of New-York, of the communion of the church of England, as by law established, for the better explaining and more effectually putting in execution an act of the general assembly, entitled, An act for settling the ministry and raising a maintenance for them in the city of New-York, county of Richmond, Westchester and Queen's county, for the more equal and impartial assessing the minister and poor's tax to be raised in the city and county of New-York, Queen's county, Westchester county, and the county of Richmond, for altering the time of electing vestrymen and church-wardens in Richmond county; and also such certain parts of the act for enabling the inhabitants of the city of New-York, to choose annually two vestrymen for each respective ward within the said city, as do imply such pre-eminence and distinction, be, and are hereby declared to be fully and absolutely abrogated, abolished, annulled, repealed and made void; as inconsistent with, and repugnant to the constitution of this state: And it is hereby

Equality between religious denominations.

further declared, That nothing in this act contained, shall in any wise be construed or understood, to give any kind of pre-eminence or distinction to the episcopal mode of religious worship within this state; but, that an universal equality between every religious denomination, according to the true spirit of the constitution towards each other, shall forever prevail.

VII. *And be it further enacted by the authority aforesaid, That nothing in this act contained, shall be deemed, esteemed, adjudged or construed, to enlarge or confirm any right, power or authority, but such as the said corporation legally had, held and enjoyed on the nineteenth day of April, one thousand seven hundred and seventy-five, and other such powers, rights and authorities, as are expressly given by this act.*

This act not to confirm any power but such as the corporation had the 19th April, 1775.

C H A P. XXXVIII.

An ACT to repeal an Act, entitled, An Act for settling a Ministry and raising a Maintenance for them in the City of New-York, County of Richmond, Westchester, and Queen's County, and also the several Acts therein mentioned.

Passed 20th April, 1784.

Preamble.

WHEREAS by virtue of sundry acts herein after enumerated, passed by the legislature of the late

colony of New-York, the inhabitants in the city and county of New-York, county of Richmond, Westchester and Queen's county, without distinction, have for many years been compelled to pay taxes for the support of the episcopal clergy in the said counties, contrary to every principle of justice and sound policy ; And whereas by colour of such laws it has been pretended, that the episcopal churches were established in the said counties, and claims in consequence thereof have been set up, and prosecutions commenced injurious to the rights and privileges of other religious denominations, to the great vexation and disquiet of the good people of this state ; And whereas, although the spirit of the said laws are repugnant to the constitution of this state, as tending to establish and maintain a particular denomination of christians, and the ministers thereof, it appears nevertheless incumbent on the legislature of this state, in order to remove every ground of uneasiness that may arise from such pretended claims in future, that the said laws should be repealed ;

I. Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That

Acts of the late Assembly repealed. the act, entitled, An act for settling a ministry and raising a maintenance for them in the city of New-York, county of Richmond, Westchester and Queen's county, passed the 22d day of September, in the year of our Lord 1693 ; and also an act, entitled, an act for the better explaining and more effectual putting in execution an act of general assembly, entitled, An act for settling a ministry and raising a maintenance for them in the city of New-York, county of Richmond, Westchester and Queen's county, passed the 4th day of August, 1705 ; and also the act, entitled, An act for the more equal and impartial assessing the minister, and poor tax, to be raised within the city and county of New-York, Queen's county, Westchester county, and county of Richmond, passed the 27th day of July, 1721 ; and also the act, entitled, An act to oblige all persons that shall come to inhabit or reside in the city of New-York, in order to expose any goods, wares or merchandizes to sale, at any time after the annual assessment made for the tax, for the maintenance of the minister and poor of the said city, to pay their due proportion towards the same, passed 27th November, 1741 ; and also an act to revive an act, entitled, An act to oblige all persons that shall come to inhabit or reside in the city of New-York, in order to expose any goods, wares or merchandizes to sale, at any time after the annual assessment made for the tax, for the maintenance of the minister and poor of the said city, to pay their due proportion towards the same, passed the 14th of May, 1745 ; and also the act, entitled, An act to enable the inhabitants of the city of New-York, to chuse annually two vestrymen for each respective ward within the said city, passed the 29th November, 1745 ; and also the act, entitled, An act for the further explaining and rendering more effectual the two acts therein mentioned, so far as they relate to the city of New-York, passed the 19th February, 1756 ; and also an act, entitled, An act to revive an act, entitled, An act to oblige all persons that shall come to inhabit or reside in the city of New-York, in order to expose any goods, wares or merchandizes to sale, at any time after the annual assessment made for the tax, for maintenance of the minister, and poor of the said city, to pay their due proportions towards the same, passed the 11th September, 1755 ; and also an act, entitled, An act to amend an act, entitled, An act for settling a ministry ; and raising a maintenance for them in the city of New-York, county of Richmond, Westchester and Queen's county ; and an act, entitled, An act, to enable the inhabitants of the city of New-York, to chuse annually two vestrymen for each respec-

tive ward within the said city, so far as the same relates to the election of the church-wardens and vestrymen of the city of New-York, passed the 27th day of January, 1770; and an act, entitled, An act for altering the time of assessing and collecting the taxes, for the support of the minister and the poor in the city of New-York, passed the 31st day of January, 1775; and an act, entitled, An act against Jesuits and Popish priests, passed the 31st day of July, 1700, and all and every of them shall be, and hereby are repealed.

C H A P. XL.

Amended 13th sess.
ch 33.

An ACT to ascertain the Quality of Pot and Pearl Ashes.

Passed 23d April, 1784.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,

No pot or pearl ashes
to be shipped before
inspection.

That no person or persons whatsoever, shall ship any pot or pearl ashes for exportation, before he shall first submit the same to the view and examination of an inspector to be appointed for that purpose, who shall start the same out of the casks, and carefully examine, try and inspect the same, and sort the same in three different sorts, if necessary; that the said inspector shall put each sort by itself into tight casks, well hooped and coopered, which

Inspector's duty.

he shall distinguish by the words, first sort, second sort, or third sort, with the words, pot, or pearl ashes, branded in plain legible letters, together with the letters of his name, and the place where such pot or pearl ashes are so

Allowance to the
inspector.

inspected, at full length, on each of the casks; for which services, and also for the additional service of repacking the said pot or pearl ashes, and putting the casks in such condition as they were in when brought to him for inspection, and for weighing the same, and delivering to the proprietor an invoice or weigh note, under his hand, of the weight of each cask, the said inspector shall have and receive six-pence for every hundred weight so inspected, one half to be paid by the purchaser, and the other half by the vendor. Provided, That if any such cask or casks shall, in the judgment of the inspector, be unfit for shipping, such further coo-perage, or such new casks as may be necessary, shall be made or done at the expense of the vendor.

Weight of casks to
be marked thereon.

II. *And be it further enacted by the authority aforesaid* That the said inspector, at the time of starting the said pot or pearl ashes for inspection, shall weigh the cask or casks, and mark the weight with a marking iron on each head thereof.

III. *Provided always, and be it further enacted by the authority aforesaid*

Mode of settling
disputes about the
quality of pot or pearl
ashes.

That if any dispute shall arise between such inspector and any possessor of such pot or pearl ashes, concerning the quality thereof, upon application to any magistrate within the city or county where the same may happen, such magistrate shall, and is hereby required to issue a warrant to three indifferent judicious persons of skill and integrity, to be viewers to view and search the said pot or pearl ashes, as the case may be; one of the said persons to be named by the possessor of such pot or pearl ashes, another of them to be named by the inspector, and the third to be named by the magistrate; which three persons shall be duly sworn carefully to examine the said pot or pearl ashes, as the case may be, and make report, as soon as conveniently may be, of the quality

thereof, as they find the same: And the said magistrate is hereby empowered and required to give judgment agreeable to the report of the said three viewers, or any two of them; and in case the said pot or pearl ashes are adjudged to be of the quality or qualities as distinguished by the inspector, the said magistrate is hereby authorised to direct the said pot or pearl ashes, to be branded by the said inspector agreeable to such distinction, and shall also award and order the owner or possessor of the said pot or pearl ashes, to pay to such inspector six-pence for each hundred weight for all such pot or pearl ashes as shall be adjudged as aforesaid, with reasonable costs and charges; but in case the said pot or pearl ashes upon trial shall be found to differ in quality from the said inspector's judgment thereon, the costs shall be paid by the inspector.

IV. *And be it further enacted by the authority aforesaid,*

Inspector may go on board of any vessel to search for pot or pearl ashes, &c.

That every such inspector shall have full power and authority, by virtue of this act, and without further or other warrant, to enter on board of any ship, sloop or vessel whatsoever, lying or being in the harbour where such inspector is authorised to inspect pot or pearl ashes, to search for and make discovery of any pot or pearl ashes shipped or shipping on board any such vessel for exportation out of this state: And if such inspector shall on search discover any cask or casks of pot or pearl ashes not branded as before directed, the person or persons so shipping, or having shipped the same, shall forfeit all and every such cask or casks of pot or pearl ashes so shipped or shipping, and not branded in the manner herein before directed; and the master or commander of any such vessel who shall receive any such cask or casks of pot or pearl ashes not branded as aforesaid, shall forfeit the sum of five pounds; and if any master of any ship or vessel, or any of his servants or seamen, shall obstruct or hinder the said inspector in making such search as aforesaid, every person so offending, shall, for such offence, forfeit the sum of ten pounds.

V. *And be it further enacted by the authority aforesaid,*

Inspector show to be appointed.

That the governor or person administering the government of this state for the time being, by and with the advice and consent of the council of appointment, shall, and is hereby authorised and required to appoint one or more fit person or persons to be inspector or inspectors of pot and pearl ashes, in each such city or county of this state, as to the said governor and council shall appear necessary; and if any such inspector or inspectors so appointed, shall, by any accident, be rendered incapable, or shall neglect to execute the said office, or misbehave himself or themselves therein, or shall die, then, and so often, and from time to time as such cases may arise, it shall and may be lawful for the said governor, or person administering the government, by and with the advice and consent of the said council of appointment, to appoint other fit and capable person or persons in his or their stead, who shall thereupon be the inspector or inspectors for putting this act in execution, with all the powers, and subject to all the penalties described in this act; and each of the inspectors so to be appointed by virtue of this act, shall, before he enters upon the execution of his office, take and subscribe an oath before a magistrate of this state, in the words following, viz.

I do solemnly swear, That I will faithfully, truly and impartially to the best of my judgment, skill and understanding, execute, do and perform the office and duty of an inspector and examiner of pot and pearl ashes, according to the true intent and meaning of a law of this state, entitled, An act to ascertain the quality of pot and pearl ashes; and that I will not, directly or indirectly, by myself, or by any other person or persons for me, buy or

sell any pot or pearl ashes during the time I continue inspector of the same, on my own account, or upon the account of any other person or persons whomsoever. So help me God.

VI. And be it further enacted by the authority aforesaid, That if any inspector of pot or pearl ashes, not then employed in the examination and inspection of pot or pearl ashes (according to the duties required by this act) shall, on application made for the examination of any pot or pearl ashes as aforesaid, refuse, neglect or delay to proceed to such examination and inspection, for the space of three hours after such application so made to him, the inspector so refusing, neglecting or delaying to make such examination and inspection, shall, for each offence, forfeit the sum of twenty shillings, to the use of the person or persons so delayed.

Penalty on counterfeiting brand marks.

VII. And be it enacted by the authority aforesaid, That if any person or persons shall counterfeit any of the aforesaid brand marks, or impress or brand the same on any cask or casks of pot or pearl ashes, knowing such brand mark or impression to be counterfeit, he, she or they, being thereof legally convicted, shall forfeit and pay the sum of fifty pounds.

Penalty on emptying casks branded, to put in other pot or pearl ashes without cutting out the brand marks.

VIII. And be it further enacted by the authority aforesaid, That if any person shall empty any cask or casks of pot or pearl ashes branded as aforesaid, in order to put in other pot or pearl ashes for sale or exportation, without first cutting out the said brand marks, the person or persons so offending, shall respectively forfeit the sum of fifty pounds.

Fines and forfeitures, how recovered and applied.

IX. And be it further enacted by the authority aforesaid, That all the fines and forfeitures mentioned in this act, shall be recoverable in the same manner as other debts of the same value are recoverable by the laws of this state, by suit, bill, plaint or information, wherein no essoin, protection or wager of law, or any more than one imparlance shall be allowed; the one moiety of all which fines and forfeitures (except such as are herein before otherwise applied) when recovered, shall (after deducting the necessary costs) be immediately paid into the hands of the treasurer of this state, towards the support of the government thereof, and the other half to the officer or other person who will sue for the same.

All pot and pearl ashes to be inspected where shipped for exportation.

X. And be it further enacted by the authority aforesaid, That all pot or pearl ashes shipped for exportation from any port of this state, shall be inspected at the place where the said pot or pearl ashes may be so shipped for exportation out of this state, having the name of the place where it shall be shipped, and the letters of the inspector's name who has inspected and examined the same as before directed.

C H A P. XLII.

Amended 13th Feb. ch. 32.

An ACT to restrain the feeding and burning the Grass, and cutting the Timber on certain Beaches and Islands therein mentioned.

Passed 24th April, 1784.

I. BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That from and after the first day of May next, no horses, neat cattle, sheep

Restriction as to
cattle going at large,
or feeding on certain
places.

or hogs, small or great, shall be suffered to go, run or feed on any of the beaches or islands lying between a certain gut or inlet, called Mottick Gut, to the eastward, and another certain gut or inlet, called Huntington West-Gut, to the westward; and in case any horses, neat cattle, sheep or hogs, small or great, shall after the said first day of May next, be found on any the said beaches or islands, it shall and may be lawful for any person or persons whatsoever, to take, seize and keep the said horses, neat cattle, sheep or hogs, as and for their own absolute property; any law, usage or custom to the contrary notwithstanding; Always provided, That this act, nor any thing therein contained, shall not be construed to debar or prevent any person or persons whatsoever, having meadows on the said beaches or islands, from carrying on, using and feeding so many oxen and horses on the said beaches or islands, as shall be necessary for carting and stacking their hay during the proper season of getting and securing thereof.

II. *And be it further enacted by the authority aforesaid,* That if any person or persons whomsoever, shall set fire to, or burn the old grass, or cut any of the timber on any of the said beaches or islands, he, she or they so offending on due proof thereof, shall forfeit and pay the sum of five pounds to any person or persons who will sue for the same, to his, her or their own proper use.

C H A P. XLVI.

An ACT for the Inspection of Sole Leather in the City of New-York.

Passed 28th April, 1784.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the mayor, aldermen and commonalty of the city of New-York, in common council convened, shall be, and hereby are authorized and directed to appoint from time to time, and as often as vacancies, by deaths, resignation of office, or otherwise, shall happen, two fit persons to inspect and weigh all sole leather that shall be manufactured within the said city of New-York, or imported or brought into the said city from any place whatsoever, after the passing of this act; which said inspectors shall respectively take and subscribe the following oath, before the mayor or recorder of the city of New-York, before they shall be deemed qualified for, or proceed to the execution of the duties enjoined upon them by virtue of this act, viz.

I do solemnly swear, That I will, well, faithfully and impartially, according to the best of my skill and understanding, execute, do and perform the office and duty of an inspector and examiner of sole leather, and will not, directly or indirectly, by myself, or by any person or persons under me, or for my benefit or advantage, buy or sell any sole leather during the time that I shall continue an inspector of the same (except for the use of my own family) according to the true intent and meaning of an act, entitled, An act for the inspection of sole leather in the city of New-York. So help me God.

II. *And be it further enacted by the authority aforesaid,* That from and after the passing of this act, no sole leather whatsoever shall be sold, disposed of, or used for any purpose or purposes whatsoever, within the said city of New-York, until the same

Penalty on selling
or using sole leather
not inspected, &c.

shall be inspected, sealed and weighed by one of the inspectors to be for that purpose appointed by virtue of this act, under the penalty of forty shillings for every such offence, to be sued for and recovered by action of debt, with costs of suit, in a summary way, by any person or persons who will sue and prosecute for the same, before the mayor, recorder, or any alderman of the city of New-York, to be levied by process to be directed to the sheriff or any one of the constables of the said city, commanding him or them, or either of them, to levy the same by distress and sale of the offender's goods and chattels; one moiety whereof, when so recovered, to be paid to the chamberlain of the city of New-York, to be applied at the discretion of the mayor, aldermen, and commonalty of the said city; to the use of the poor thereof, and the other moiety to the use of such person or persons who prosecuted for the same.

III. *And be it further enacted by the authority aforesaid,* That there shall be paid to the inspector for inspecting, sealing and weighing of every side of sole leather, the sum of four-pence; one half thereof to be paid by the seller, and the other half by the purchaser.

IV. *And be it further enacted by the authority aforesaid,* That each inspector shall, and is hereby required to provide himself with proper seals for the purpose aforesaid, and to impress on every side of sole leather which shall be deemed dry, good and merchantable, his own name and the words, New-York, at full length, and also the weight thereof. And if any person or persons shall presume to counterfeit such mark or marks, to be made by any such inspector, by making an impression or mark, on any sole leather, he or they so offending, shall forfeit and pay for every such offence, the sum of ten pounds, to be sued for, recovered and applied in manner aforesaid.

Leather not good, how to be used. V. Provided nevertheless, That all sole leather, which upon inspection as aforesaid, shall be found not to be dry, good and merchantable, and which, as such, shall not be branded in manner herein before directed, may be used for any other purposes except being worked into shoes, boots or buckets.

VI. And provided further, That all such sole leather which shall not on such inspection as aforesaid, be deemed good and merchantable by the inspector, shall be by him marked with the word BAD, and may then be used for any other purpose or purposes, except being worked into shoes boots or buckets; and every such inspector is hereby required and directed to keep proper instruments for the purpose of marking such unmerchantable leather accordingly; and if any person or persons shall presume to work up into shoes, boots or buckets, any sole leather, before the same shall be inspected as aforesaid, or any sole leather which shall be marked with the word BAD, as aforesaid, he or they so offending, shall forfeit and pay for every such offence, the sum of ten pounds, to be sued for, recovered and applied in manner before directed.

Penalty on making shoes, boots or buckets of leather marked, BAD.

C H A P. LII.

Amended 8th 1st.
ch. 38. and 10th sess.
ch. 95.

An ACT for the better laying out, regulating and keeping in Repair all common and public High-ways and private Roads in the Counties of Ulster, Orange, Dutchess, Washington, Westchester, Albany, and Montgomery.

Passed 4th May, 1784.

WHEREAS the keeping in good repair public roads, and highways, contributes greatly to the ease and advantage of the inhabitants of a country;

I. Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,

Freeholders and inhabitants of each town at their annual town meetings to choose commissioners or overseers of highways.

That from and after the passing of this act, the freeholders and inhabitants of the towns within the counties of Ulster, Orange, Dutchess, Washington, Westchester, Albany and Montgomery, shall be, and hereby are authorized at their annual town meetings for electing town officers, to choose

and elect not less than three nor more than five freeholders, as shall be determined by plurality of voices of the inhabitants at each annual town meeting,

1 To be appointed by sessions in Albany, Montgomery and Columbia, 10th sess. ch. 5 sec. 1.
See 11th sess. ch. 64. sec. 7.

ing, in each respective town, to be commissioners to lay out and regulate the highways in the town for which they shall be so respectively chosen; and also as many overseers of the highways in each town as there shall be road districts in the said town, who are to oversee, repair and keep in order

the several highways within the several districts for which they shall be elected and chosen overseers as aforesaid; and the persons so to be chosen commissioners or overseers, are hereby required to execute the said offices respectively.

II. And be it further enacted by the authority aforesaid,
Commissioners to regulate, and may alter roads already laid out, &c.

That the commissioners, or the major part of them, in the respective towns for which they shall be chosen commissioners, are hereby empowered and authorized to regulate the roads already laid out, and if any of them shall appear inconvenient, and an alteration necessary, and the same be certified upon oath, by twelve reputable freeholders of such of the said counties wherein the alteration may be required,

to alter the same in such manner as a majority of commissioners in such town shall judge meet and convenient; and also to lay out such other public highways and roads, as they or the major part of them shall judge necessary, as well for the convenience of travellers as for the inhabitants of such town.

provided nevertheless, That where any roads shall be laid out through inclosed or improved lands, the owner or owners shall be paid the value of the land so to be laid out into an highway or road, with such damages as he, she or they may sustain by reason thereof, in manner following, viz. The value of the said lands, and the amount of the damages the owner or owners thereof may sustain as aforesaid, shall be determined, and the value set and appraised by two justices of the peace, and by the oaths of twelve reputable freeholders not having an interest in the said land so to be laid out into an highway or road;

and the said freeholders shall be summoned by any constable of the town in which such road or highway shall be laid out as aforesaid, by virtue of a warrant to be issued by the said two justices of the peace for that purpose. And if any road within any town so laid out to be a common public highway, and the same be laid out at the request of twelve reputable freeholders of such county,

If the road be a public one, how damages and charges to be paid.

at the request of twelve reputable freeholders of such county,

then the whole value of the said lands and damages, together with the charges of the commissioners and of summoning the jury, and the whole proceedings thereon had, shall be paid as the other contingent charges of said counties are paid; but if the road so to be laid out shall be a private road, and

And how paid if a for the particular convenience of one or more towns or private road, &c. neighbourhoods, then such towns or neighbourhoods requiring the same, shall pay and defray the whole of such value, damages and charges; and when any such highway or road shall be so laid out and appraised, it shall be lawful for any justice of the peace of the county, or any one of the commissioners of the town in which such road is laid out, to order the overseers of the road district next unto such road, to open and work on the same: Provided always, That no road or highway shall be laid through any † orchard or garden without the consent of the owner or owners thereof, any thing herein contained notwithstanding.

III. *And be it further enacted by the authority aforesaid,* That if any person or persons within any of the said towns do, or hereafter shall alter or obstruct any highway or road, such person so offending shall, for every such offence, forfeit the sum of two pounds, to be recovered before any justice of the peace of the county where the offence shall happen, upon the oath of any one or more credible witness or witnesses, and levied by distress and sale of the goods and chattels of the offender, by warrant from such justice, to be directed to any constable of the town where such offender shall reside; and the said constable is hereby required to pay such penalty into the hands

of the commissioners of the highways for the town wherein the offence was committed, to be by the commissioners thereof applied for and towards repairing the public roads and bridges within the town where such forfeiture shall arise.

IV. *And be it further enacted by the authority aforesaid,* That all public roads to be altered or laid out by the commissioners shall be of the ‡ breadth of not more than four rods, nor less than two rods.

V. And in order that the burthen of keeping the highways in the said counties in repair, and making other highways for the ease, benefit and convenience of the inhabitants thereof, may be borne as equally as the nature of the case will admit of; *Be it further enacted by the authority aforesaid,*

That the commissioners for each town shall be, and are hereby required to meet within ten days after they shall be so chosen, at the place of town meeting, on such day as they shall agree upon, and as often thereafter as need shall be, and at such time and place as they shall think meet; that the overseers of the road districts respectively, shall deliver a list subscribed by such overseer to the clerk of the town, in which such overseers shall respectively be elected, within eight days next after the day of election, which list shall contain the names of all the inhabitants in such road district, who are in and by this act made liable to work on the highways; that the said clerk shall deliver such lists to the commissioners of the town, who, or a majority of such commissioners shall, at their next meeting, or as soon as may be thereafter, affix to the names of each respective person mentioned in such lists respectively, the number of

† Altered 10th sess. ch. 95. sec. 30.

‡ New roads to be four rods wide at least. 10th sess. ch. 95. sec. 4.

days which such persons shall respectively be liable to work in the then ensuing year, to be determined by the commissioners in proportion to the estate and ability of each respective person; and the commissioners shall thereupon, after causing the clerk of the town to make a copy of such list, and after the said commissioners or a majority of them shall have subscribed the copies of such lists, cause the same respectively to be delivered to the overseers of the town, having returned the same in the manner herein before mentioned, or his successor in office: Provided always, That if the name of any person should be left out of such lists, or the road increase by the accession of new inhabitants, such persons whose names are omitted or shall remain in the town, shall, from time to time, be added to the said list, and the persons be rated by the said commissioners to work on the highways: Provided also, That it

No person to be rated more than 20 days.

shall not be in the power of the commissioners to rate any one person rateable by this act, at more than † twenty days annually.

Who are subject to work on the roads.

VI. And in order the more clearly to ascertain what persons shall be compellable to work on the highways in each district; *Be it enacted by the authority aforesaid*, That every freeholder, house-keeper, and other person exercising any trade, business or labour for themselves, and on their own account, or receiving wages for such labour within the said counties, shall be liable to work on the public roads and highways.

VII. *And be it further enacted by the authority aforesaid*, That all the inhabitants of the respective towns who shall be rated to work on the highways, shall, as often as they or any of them shall receive notice from the overseers of the highways for the time being, to work on the highways, punctually attend the said service, either by themselves or by an able sufficient man in their stead respectively, with proper tools, and faithfully work all the number of days at which they are rated, if required, at such place or places as the overseer shall direct. And in case any person or persons duly warned shall

On neglect, when warned, forfeit 20s.

refuse or neglect to appear, or being come to work on the highways shall remain idle, or not work faithfully, or hinder or deter any other from doing his duty, such offender shall, for each and every such offence, forfeit the sum of twenty shillings, to be adjudged by the overseer of the highways in the district where the offence shall happen, and to be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of such overseer, and to be directed to any

To be paid to the overseers, to repair roads

constable within the town where the offender shall reside; and the said forfeitures to be paid to the said overseer; and to be by him well and faithfully laid out within his district

for and towards repairing the public roads and bridges within the same.

VIII. *And be it further enacted by the authority aforesaid*, That if the overseers of the highways and roads shall think fit, and have occasion for any team, cart, waggon or plough, and a man to manage the same, the said team, cart, waggon or plough, and man to manage the same, shall be esteemed to be for, in lieu, and instead of three days work of one man, and the fine to be proportionable: that is to say, Treble to the fine to be imposed for the neglect of one person; and every working man shall be obliged to bring one spade, hoe, axe, crowbar, pickaxe, or other working tool, as shall be directed by the overseers of the highway in the respective road districts.

† Altered as to Albany, Montgomery and Washington, 10th sess. ch. 95. sec. 5.

IX. *And be it further enacted by the authority aforesaid,* That all trees standing or laying on, or in any land through which any common public highway or road is or shall be laid out, shall be for the proper use of the owner or owners of such land, so as the overseer or overseers of the highways shall be authorised to take and use so much timber standing or lying on such road, as may be necessary to repair the highway or bridges leading through such land.

X. *And be it further enacted by the authority aforesaid,* That if any tree shall fall out of any inclosed land, into, or across any of the public highways, that the owner of such inclosure shall, within twelve hours after the same be so fallen, remove the same, or be liable to a fine of twenty shillings for every day such owner shall neglect to remove the same, after notice given by any person or persons whatsoever; to be recovered and applied in the manner as other fines and forfeitures are before directed to be recovered and applied by this act.

XI. *And be it further enacted by the authority aforesaid,* That in case it should not be necessary in any one or more of the said road districts, to have all the days wrought by the inhabitants that this act requires, that then the commissioners shall direct the overseers to let the several persons work in their just proportion to the days such persons are respectively rated at, and no more; or to pay an equivalent at the rate of four shillings per day.

XII. *And be it further enacted by the authority aforesaid,* That the commissioners of the respective towns, or the major part of them, shall from time to time, during the continuance of this act, enter in writing all the highways so by them laid out or altered; and the highways so laid out and altered, they shall cause to be entered of record with the clerks of the respective towns.

XIII. *And be it further enacted by the authority aforesaid,* That upon application to the commissioners of any town for a private road, the commissioners for the said town where such private road is desired to be laid out, shall view the same, and if they are of opinion that such road is absolutely necessary, and twelve reputable freeholders under oath shall be of the same opinion, the said commissioners are hereby empowered to lay out such road, observing the same steps in ascertaining what shall be paid for the said land, as before directed to be taken in laying out public roads; and the value of the land over which such road shall be laid, and all the expences and charges attending the laying out and valuing the same, shall be paid by the person or persons applying for the same; and the said road when laid out, shall be for the only use of the person or persons who shall pay for the same, his and their heirs and assigns, but not to be converted to any other use or purpose than that of a road. Provided always, That the owner or owners of the land through which such private road may be laid, shall not be prevented from making use of such road, if he shall signify his intention of making use of the same, at the time when the jury are to ascertain the value of the land, and the damages by means of laying out such road.

XIV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for any person or persons, to hang good easy swinging gates in the said counties on such highways, roads and private ways, as the commissioners, or the major part of them, shall deem proper; such person or persons keeping the same in good and sufficient repair at their own costs and charges.

How work to be proportioned, if not all necessary.

Highways laid out or altered, to be entered and recorded.

Private roads.

For what use to be kept.

Where swinging gates may be made.

XV. *And be it further enacted by the authority aforesaid,*

Persons flaking open
high gates, forfeit 10s.
for each offence, &c.

That in case any person or persons shall flake or shore open any gate or gates that shall be allowed in the said counties by the commissioners, or wilfully and unnecessarily ride over or through any lands, meadow grounds, or cornfields, to the damage of the owners thereof, such person or persons shall, for every such offence, forfeit the sum of ten shillings, to be adjudged by any of the commissioners for the town where such offence shall be committed, and be levied by and applied in like manner as the forfeitures mentioned in the third clause of this act: Provided, That such penalty shall not be deemed a satisfaction for such damage, but the owner or owners of such meadow grounds or cornfields, shall be entitled to a right of action for the recovery of damages, the payment of such penalty notwithstanding.

XVI. *And be it further enacted by the authority aforesaid,*

Six hours to be a
day's work, and 1s.
fine for every hour's
neglect.

That every person compellable to work on the highways in either of the said counties, shall actually work for each day he is obliged to work six hours, and shall be liable to pay a fine of one shilling for every hour such person shall be in default, to be recovered and applied in like manner as the forfeitures mentioned in the eighth clause of this act.

XVII. *And be it further enacted by the authority aforesaid,*

Person compellable
to work, may com-
mute and pay 4s. per
day, &c.

That it shall and may be lawful for any person compellable to work on the public roads or highways as aforesaid, to commute for and pay money at the rate of four shillings per day, instead of working; which money shall be paid to the overseer of the highway of the district in which the person or persons paying the same do reside, to be by the said overseer applied and expended in the improvements of the said roads and highways in such road district, and towards purchasing materials and other necessities for, and in erecting and building the most public and useful bridges in the same district.

XVIII. *And be it further enacted by the authority aforesaid,*

How towns may be
divided into road di-
stricts.

That the commissioners for the time being of the respective towns, or the major part of them, shall, if needful, at least ten days before their next annual town meeting, and so annually, if they shall judge the same necessary, by writing under their hands, to be lodged with the town clerk, and by him to be entered in the town book, divide their respective towns into as many road districts as they shall judge most convenient, and for each of which districts there shall annually be elected and chosen, by the freeholders and inhabitants of such towns in the said counties respectively, an overseer of the highways.

An overseer to be
chosen for each di-
strict.

XIX. *And be it further enacted by the authority aforesaid,*

That every overseer of the highways who shall neglect or refuse to do and perform any of the duties and services required of him by this act, shall forfeit and pay the sum of five pounds for every such neglect or refusal, to be adjudged and levied, and applied in like manner as the forfeiture mentioned in the third clause of this act; And if any vacancy of overseers shall happen by death or otherwise, in any such case the commissioners of such towns respectively, or the major part of them, shall, and hereby are empowered to appoint some other fit person in such district as overseer or overseers; and the overseer or overseers so appointed, shall have the same powers, and be subject to the same fines, forfeitures and penalties, as overseers chosen by virtue of this act have, or are liable and subject to, until the next annual day of election.

Commissioners or
justices may order
overseers to work on
roads.

XX. *And be it further enacted by the authority aforesaid,* That any of the justices of the peace for either of the said counties, or any of the commissioners for the time being, may, at any time or times, order any overseer to work upon and repair any road or highway that such justice or commissioner shall think necessary, within the district of such overseers; and such overseer shall, within five days thereafter, warn and set to work the persons of his district who are obliged to work on highways upon that part of the road and highway, which he shall be so ordered to work upon and repair; and upon any neglect or refusal of such overseer or overseers, to warn and to set to work the persons in and by this act required, such overseer or overseers respectively, shall, for every such offence, forfeit the sum of two pounds, to be recovered and applied in like manner as is directed by the third clause of this act.

Overseers to keep
an account of monies
received and work
done.

XXI. *And be it further enacted by the authority aforesaid,* That the overseer of each district shall keep a just and true account in writing, wherein he shall distinctly set down or mention all such persons as have commuted for, and paid in lieu of working as aforesaid, and such as have been fined, and the sums in which they were so respectively fined, and also those who shall have actually worked on the public roads or highways, with the number of days they have so worked; which said account, together with the said list, the said overseer shall, on or before the determination of his office, deliver to one of the commissioners of the town to which he doth belong; which account so delivered, the said commissioner shall file with the town clerk, and the said overseer shall pay the balance mentioned in the said account (if any) to his successor in office, to be expended in the course of the next year; and if any of the said overseers shall refuse to pay such balance, the succeeding overseer shall and may sue for the same, in like manner as he might have done if such balance had been due to him in his own right.

XXII. And whereas the monies that may arise by fines, and from persons commuting for and paying money in time of working, may not be sufficient for purchasing materials and other necessities for erecting and building bridges, and in making such other improvements on the public roads as are absolutely necessary, and cannot be accomplished in the ordinary way of working thereon: *Be it further enacted by the authority aforesaid,* That if the major

The commissioners
may agree upon a
sum to be raised for
making improve-
ments on roads.

part of the commissioners of any town in either of the said counties shall judge it necessary to raise a further annual sum for the purpose aforesaid, they shall in that case meet together annually, and agree upon the sum necessary to be raised for that year, and shall deliver a certificate of such sum so agreed upon, in writing, subscribed with their names, to the supervisor of such town; which supervisor shall lay the same before the supervisors of the county at their next annual meeting for raising the contingent charges of the said county, who shall, and they are hereby required to order the raising and collecting of that sum of and from the freeholders and inhabitants of such town, in the same manner and after the rate that the contingent charges of the county are raised; which sum, as soon as the collector shall have collected the same, such collector shall and is hereby required to pay into the hands of the clerk of the town in which it was levied, to be paid to the overseer or overseers of the public roads or highways for the said town, on an order or orders under the hands of the major part of the commissioners being produced and delivered to him for that purpose: Provided always, That the annual sum so

agreed upon to be raised, shall not exceed the sum of one hundred pounds for any town ; which sum or sums shall be laid out and expended in the said town in the same manner and for the like purposes that fines are directed to be applied by virtue of this act : And provided also, That nothing in this clause contained shall be construed to extend to the precincts of Goshen and Cornwall, in Orange county.

This clause not to extend to Goshen and Cornwall.

Commissioners to take an oath.

XXIII. *And be it further enacted by the authority aforesaid,* That the commissioners for the highways to be chosen by virtue of this act, shall, before they execute any of the powers herein mentioned, take an oath, or if the people called Quakers, an affirmation before any justice of the peace for the county in which they shall be chosen commissioners, in the words following, viz.

[For the form of the oath, see 3th sess. ch. 38. sec. 6. and 11th sess. ch. 64. sec. 17.]

Bridges and causeways in Goshen and Cornwall, how to be repaired

XXIV. *And be it further enacted by the authority aforesaid,* That the bridges and causeways herein after mentioned, in the precincts of Goshen and Cornwall, in the county of Orange, shall be made and kept in repair by a public tax on the freeholders and inhabitants in the said two precincts, and are as followeth, viz. One bridge and causeway near the house of Zachariah Dubois, deceased ; one other bridge and causeway near Richard Goldsmith's one other bridge and causeway near Johannes Decker's ; one other bridge and causeway near Benjamin Tusten's ; one other bridge and causeway across Pochuck Creek, where the old bridge now stands ; one other bridge and causeway near Warwick meeting-house ; one other bridge and causeway near Grey

This section extends to bridges over Jo-loff Jansen's kill 2th sess. ch. 31. sec. 1.

Court ; one other bridge and causeway near Curtis Coleman's ; one other bridge or causeway across the Murderer's Creek, near Cornwall ; one other bridge and causeway across Schonnemunck-Creek, near Ketchum's mill ; one other bridge and causeway over the said creek, called Coal-House Bridge ; one other bridge and causeway near the widow Tuthil's ; one other bridge and causeway near Thorn's mill ; one other bridge and causeway near the house of the late Daniel Denton, deceased ; one other bridge and causeway near the house of Jeremiah Curtis ; one other bridge and causeway near the house late of John Mc. Clean, deceased ; one other bridge and causeway across the Walkill, at the outlet of the drowned lands ; one other bridge and causeway across Warwick-Creek, near where Israel Wood's mill formerly stood ; one other bridge and causeway near the grist-mill of John Wheeler, Esquire ; one other bridge over the Murderer's Creek, known by the name of Vendeusen's Bridge ; and one other bridge and causeway across the Trout-Brook : And the commissioners of the highways for the time being, for the said precincts of Goshen and Cornwall, are hereby directed and required to cause the afore-mentioned bridges and causeways to be well and sufficiently

To divide expences between Goshen and Cornwall.

made and kept in repair ; and an account of the expences attending the same, shall be transmitted to the supervisors of the county of Orange at their annual meetings, who are hereby required and directed to divide the whole amount of such expences between the said precincts of Goshen and Cornwall, in the same proportion as the other contingent charges of the said county of Orange are usually divided between the said two precincts, and cause the same to be levied and collected from the freeholders and inhabitants of the said two precincts, and paid to the county treasurer, in like manner as the other contingent charges of the said county are raised and paid : And the said treasurer is hereby directed and

required from time to time, to pay the said monies to the said commissioners, on a warrant or warrants from the said supervisors, as is usual in other cases; any thing herein contained to the contrary notwithstanding.

XXV. And whereas there are many creeks or rivers which run through several towns in the county of Ulster, which the common public highways are laid through or across; *Be it further enacted by the authority aforesaid*, That the freeholders and inhabitants of such towns, where any such creek or river runs through, which might be forded, shall be obliged to fill up and level the ford or fords, and shall keep the said ford or fords in repair, as well as any other part of the highways in any of the towns aforesaid.

XXVI. *And be it further enacted by the authority aforesaid*, That if it shall happen that the improved farm of any inhabitant of the said counties shall be divided and lie in different towns, then, and in such case every such inhabitant shall be subject to work upon the highways in that town only in which his dwelling house is erected.

XXVII. *And be it further enacted by the authority aforesaid*, That in the said counties of Albany and Montgomery, where any carriages or sleighs meet each other on any of the said roads or highways, the persons in carriages or sleighs going from the city of Albany, shall give way to those going towards the said city; and all persons travelling eastward in any of the said roads or highways, on the east side of Hudson's river shall give way to those travelling westward, and vice versa, on the west side of the said river, under the penalty of twenty shillings for each offence, to be recovered and applied as directed in the third clause of this act.

XXVIII. *And be it further enacted by the authority aforesaid*, That every public road or highway, leading from any town in which there is a considerable settlement, to any place of embarkation in either of the said counties, or where a new road shall be required to be laid out, that then, and in every such case, such public road or highway, shall be continued from town to town, and through the same as straight and direct as the nature of the ground will admit; and that such public road or highway may be established, or being established, may be altered, so as to be more generally convenient and useful to the inhabitants of the respective towns through which the same may run, it shall and may be lawful to and for the commissioners of the town which require the said road to be laid out or altered, by writing under their hands, to appoint and summon a general meeting of all the commissioners of the respective towns through which the road proposed, shall extend, at any time not less than ten days, or more than twenty days after the service of notice on the said commissioners, and at such convenient place in that town which shall be most central to the usual residence of the major part of such commissioners, and the said commissioners are hereby directed and required to meet and attend according to such appointment: And when the said commissioners so convened shall have consulted together and deliberated upon the subject of the said meeting, they shall then proceed to lay out the highway or road required from town to town, and in the best and most advantageous manner for public and general utility and convenience; that is to say, the commissioners of each respective town shall lay out that part of the intended road, which shall extend through the town of which they are respectively commissioners, and the same so being laid out, shall be certified, returned and

Every road leading to a place of embarkation, to run straight from town to town.

This section extended to the towns of Livingston and Clermont, 12th sess. ch. 34 sec. 2.

recorded as a public road or highway, in the manner directed in and by this act, and shall be maintained in each respective town: But if a majority of the

If a dispute arises about the place, and another place be proposed, how to be determined.

commissioners of any or either of the said towns, when so met and assembled, shall disapprove of, and not consent to the place or places where any part of such roads shall be proposed to be laid out, and propose any other place or places for the same, to which the commissioners of the town through which that part of the road is to pass, or a majority of them, do not consent and agree, then, and in every such case, a description shall be made in writing, signed by all the commissioners present, of both the roads proposed; and it shall be lawful for three or more of the said commissioners to apply to any two justices of the peace for the said counties respectively, not residing or holding lands in that town, concerning the road through which such controversy shall have risen, or the town for which such road shall be required, and such justices are hereby authorized and directed thereupon to issue their precept to the sheriff of the said county, commanding him to summon a jury of twelve good and sufficient freeholders of the said county, not interested in the course of the said road, who being duly sworn for that purpose, shall enquire and give their verdict, which of the roads in controversy will be the best and most commodious as a main and public highway; and an inquest being thereof made under the hands and seals of the said justices and jurors, shall be final and conclusive, according to which the road shall be laid out, certified and returned as a public road, by the respective commissioners through whose town it shall extend, and the return thereof, together with the said inquisition, being filed in the office of the said county, and entered of record, the said road shall be deemed and esteemed a public road or highway to all intents and purposes, and be supported and maintained in the respective towns through which the same shall extend, in the same manner as the other highways in such terms are directed and required to be maintained and supported by this act; Which inquest shall be at the expence of the town, the commissioners of which shall have refused to lay out the said road in the direction found by such inquest, and such expence shall be paid out of the monies raised in such town, in pursuance of this act; Provided always, That if such road so altered or laid out, shall run through any improved lands, the proprietor thereof, shall be satisfied and paid therefor, as directed by the second section of this act: And provided further, That nothing in this act shall be construed to make void, abridge, or any wise lessen the rights and privileges granted to the city of Albany, by charter; any thing contained in this act to the contrary thereof notwithstanding.

Privileges of the city of Albany, not altered by this act.

XXIX. *And be it further enacted by the authority aforesaid,*

When deep snows fall, inhabitants to open roads.

That the overseers of the highways for the road districts respectively, are hereby empowered, directed and required, to notify and order such a number of the inhabitants of their respective districts, with their sleds, horses or oxen, as they the said overseers shall think sufficient and proper to open the roads, whenever deep snows happen to fall; and if any person or persons being so notified and ordered as aforesaid, shall neglect or refuse to open any such road, such person or persons shall respectively forfeit the sum of ten shillings for every day they shall so neglect or refuse such services, to be levied by the overseer, requiring the same, in like manner as the other fines and penalties inflicted by this act; which said forfeiture of ten shillings shall be paid to the commissioners of the highways

for the town where such forfeiture shall arise, to be by them applied in building and repairing bridges in the same.

XXX. *And be it further enacted by the authority aforesaid, That the commissioners of highways that shall be appointed by virtue of this act, shall respectively be allowed the sum of six shillings for each and every day they shall respectively be employed in the execution of their said office, to be allowed and paid as the other contingent expences of the town they shall be commissioners for, are allowed and paid.*

XXXI. *And whereas the counties aforesaid are divided into towns, manors, districts and precincts: Be it further enacted by the authority aforesaid, That the word, Town, as used in this act, shall be taken and understood to comprehend the words, town, manor, district and precinct, as fully as though the same were used in this act.*

XXXII. *And be it further enacted by the authority aforesaid, That all and every the laws for the laying out, altering, and keeping in repair public highways and private roads within the counties aforesaid, by whatsoever stile or title such laws may be named, shall be, and hereby are repealed.*

[The last clause of this act, being the 33d section thereof, is repealed, 8th sess. ch. 38. sec 1.]

C H A P. LIV.

An ACT to amend an Act, entitled, An Act for Relief against absconding and absent Debtors; and to extend the Remedy of the Act, entitled, † An Act for granting a more effectual Relief in Cases of certain Trespasses; and for other Purposes therein mentioned.

‡ 6th sess. ch. 31.

Passed 4th May, 1784.

WHEREAS divers persons being indebted to the citizens of this state, having, since the 9th day of July, in the year of our Lord one thousand seven hundred and seventy-six, removed from parts of this state out of the power of the fleets and armies of the king of Great-Britain, late enemies of this state, to parts thereof then within the power of the said fleets and armies; or having during the late war remained in parts of this state which then were within the power of the fleets and armies of the said king, and who have respectively withdrawn himself or themselves from the state; by which creditors will be defrauded of their just dues, unless a legislative provision shall be made for their relief:

I. *Be it therefore enacted by the People of the State of New-York, represented in Senate, and Assembly, and it is hereby enacted by the authority of the same,*

How citizens to recover their debts from persons who have left this state.

That if any person or persons, who, since the ninth day of July, in the year one thousand seven hundred and seventy-six, removed from any part of this state out of the power of the fleets and armies of the king of Great-Britain, late enemies of this state, to any part thereof, at the time of such removal, within the power of the said fleets and armies; or having during the late war remained within the power of the fleets and armies of the said king, and who hath or have since withdrawn himself or themselves respectively, from the said state, leaving property within the same, are or shall be indebted to any person or persons, citizens of this state, in the sum of ten pounds or upwards, it shall and may be lawful for such creditor or creditors respectively, to make application to any one of the judges of the supreme court of judicature of this

state, or to any one of the judges of the court of common pleas of the county in which the property of the debtor or debtors is or doth lie, and then and there make affidavit or (if of the people called Quakers) affirmation, that such person or persons is or are justly indebted to him or them in the sum of ten pounds or upwards; and shall also prove, by one or more witness or witnesses, to the satisfaction of the judge to whom such application shall have been made, that such debtor or debtors did, after the ninth day of July, in the year one thousand seven hundred and seventy-six, remove from parts of this state out of the power of the fleets and armies of the king of Great-Britain, late enemies of this state, to some part thereof within the power of the said fleets and armies, while enemies as aforesaid; or did, during the late war, remain within the power of the said fleets and armies, and who hath or have withdrawn himself or themselves respectively from this state, from causes of disaffection or otherwise; that then, and in such case, the said judge shall, and is hereby authorized to proceed in manner, as nearly as may be, as in prescribed and directed in and by the aforesaid act, entitled, † An act for relief against absconding and absent debtors, passed the 3d day of April, 1775.

II. And whereas many persons who have injured, destroyed or occupied the real or personal estates of such inhabitants of this state, described in An act for granting a more effectual relief in cases of certain trespasses, have withdrawn themselves from this state, leaving considerable property within the same: *Be it therefore enacted by the authority aforesaid,* That it shall and

Remedy for persons who left their places of abode, and whose property in the power of the British troops, has been occupied, injured or destroyed.

may be lawful to and for any person or persons, who are or were inhabitants of this state, and who, by reason of the invasion of this state by the troops of the king of Great-Britain, left his, her or their places of abode, and who have not voluntarily put themselves respectively, in the power of the said troops since they respectively left their places of abode, his, her or their heirs, executors or administrators, after issuing process out of any court of record in this state, in the usual form, against any person or persons who have occupied, injured or destroyed, his, her or their estates, real or personal, in the power of the troops of the king of Great-Britain aforesaid, his, her or their heirs, executors or administrators; and after the defendant or defendants named in such process, shall have been returned by the officer to whom the same was directed, not found, to file a declaration against such defendant or defendants in such court of record from which such process issued; and that the plaintiff or plaintiffs shall thereupon, and within ten days after the expiration of the term in which such process shall be returnable, cause a publication to be made in one of the public news-papers printed in this state, for the space of ten weeks successively, setting forth that such process hath been issued, and declaration filed; and that unless such defendant or defendants shall enter his, her or their appearance in such action, within six months from the date of such publication, a judgment will be entered against him, her or them, in such action. That if such defendant or defendants shall not appear within the time in and by such publication limited, the court shall grant an interlocutory judgment against the defendant or defendants, and thereupon a writ of inquiry shall be granted to ascertain the quantum of the plaintiff's demands; and on the return thereof, final judgment shall be entered for the sum found in the inquisition, with costs in such manner and form, and such further proceedings shall be had thereon as if such defendant or defendants

† This act expired 1st April, 1785, and provided for 9th Feb. ch. 24. sec. 30.

had entered his, her or their appearance on the return of the process issued against him, her or them: Provided always, That no execution on a judgment to be obtained in the mode prescribed by this act, shall be levied on any ship or other vessel, or the cargoes thereof respectively; nor on any property forfeited to the people of this state.

III. And whereas the intent of the person or persons bringing such suit, may be to satisfy such judgment out of the personal property, monies, goods or chattels of such defendant or defendants in the hands of persons now remaining within this state: *Be it therefore enacted by the authority aforesaid,* That it shall and may be lawful for every plaintiff in such suit, to notify, in the presence of two witnesses, the person or persons in whose hands he shall conceive such personal property to be, of the bringing of the suit and his design, that the judgment to be obtained shall be satisfied out of the personal property of

Plaintiff to notify the person in whose hands property may be.

the said defendant or defendants in the said person's hands, and request his, her or their certificate on oath, in writing, of the particulars or amount of the same, which shall be filed with the declaration. And if on the final judgment the same shall not be found, or if such persons respectively shall refuse to give such certificate as aforesaid, it shall be lawful for the court in which such suit shall be commenced, to bring such person or persons into court by attachment, to examine them on interrogatories, and to commit them without bail or mainprize until they comply with such rule or order, as the said court in their wisdom shall think just and equitable.

IV. *And be it further enacted by the authority aforesaid,* That the surplus of any monies which may be in the hands of any trustees to be appointed in pursuance of this act, after payment made to the creditor or creditors of any such debtor or debtors as aforesaid, by the sale of whose estate such monies shall so come into the hands of such trustees as aforesaid, and the surplus of any monies which may be in the hands of any sheriff, after paying and satisfying the sum or sums levied for by virtue of any execution or executions, whereby such monies so come into the hands of such sheriff shall be by them respectively paid into the treasury of this state, and be by the treasurer paid to the debtor or debtors, defendant or defendants, or their respective attorneys or legal representatives, whenever they shall respectively apply for the same.

V. *And be it further enacted by the authority aforesaid,* That every citizen of this state, whose estate, real or personal, has been injured, destroyed or occupied, by any such person or persons, who have so withdrawn themselves from this state respectively, may have the like remedy for recovering the damages so sustained by such injury, destruction or occupancy during the late war, as is given by this act to the persons described in and by the said act last recited.

Remedy for all citizens to recover damages for injuries done to their property by persons who have left this state.

VI. And whereas by an act, entitled, † An act relative to debts due to persons within the enemy's lines, passed the twelfth day of July, one thousand seven hundred and eighty-two, certain suits and prosecutions therein mentioned, which were already commenced or might be thereafter commenced, should be stayed until the legislature should make further provision in the premises: *Be it therefore enacted by the*

Suits for debts due to persons within the

authority aforesaid, That the necessity of staying such suits as aforesaid, does no longer exist; but that the said act, en-

† 6th sess. ch. i.

enemy's lines no longer stayed.

titled, An act relative to debts due to persons within the enemy's lines, shall, and is hereby declared to be in full force and operation, according to the true intent and meaning thereof; except so far as respects the staying of such suits.

The omission of certain words in another act, declared to be inserted.

VII. And whereas there appears to be an omission of the words, *to any person*, in the first enacting clause of the aforesaid act: *Be it therefore further enacted by the authority aforesaid*, That the words, *to any person*, shall be, and hereby are declared to be inserted between the words, Due by or from any person not within the enemy's power or lines, and the words, that has remained with, in the said first enacting clause of the said act, entitled, An act relative to debts due to persons within the enemy's lines.

VIII. And whereas it is provided in and by the said last mentioned act, that nothing therein contained should be construed to extend to any person that theretofore had been, then was, or thereafter should be a prisoner with the enemy: *Be it therefore further enacted by the authority aforesaid*, That the

The benefit of the said act extended to prisoners.

benefit of the said act shall be extended to all such persons as are described in the said proviso, except with respect to debts which such persons may have contracted whilst in captivity at any time during the late war.

C H A P. LVII.

An ACT to prevent the bringing in and spreading of Infectious Distempers in this State.

Passed 4th May, 1784.

WHEREAS the ports of this state are now open to vessels coming from any foreign parts, by means whereof many infectious distempers may be brought into this state; in order as much as possible to prevent the same:

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same*, That all vessels, of whatever kind they may be, having on board any person or persons infected with the yellow fever or any other contagious distemper, or coming from any place infected with such contagious distemper, shall not come into any of the ports or harbours of this state, or nearer to the city of New-York than the island commonly called Bedlow's-Island, and shall be obliged to perform quarantine there, or in such other place, and for such time, and in such manner as the governor, or person administering the government for the time being, or in his absence from the said city, as the mayor thereof shall think proper to direct and appoint; and that during the time of such quarantine, no person or persons whomsoever, nor any goods or merchandize whatsoever, coming or imported in such vessels, shall come or be brought on shore, unloaded, or be put on board of any other vessel within this state, or the neighbouring states of New-Jersey or Connecticut, until such vessel, persons, goods and merchandize shall respectively be discharged from such quarantine, by an order from the governor, or person administering the government for the time being, or in his absence from the said city, from the mayor thereof; and all masters or commanders of such vessels, and all others who shall presume to put on shore, unload or put on board any other vessel as aforesaid, any

How and when vessels are to perform quarantine.

person or persons, goods or merchandize, contrary to the true intent and meaning of this act, having first had notice thereof, shall forfeit the sum of two hundred pounds, current money of this state.

II. And be it further enacted by the authority aforesaid, That the several branch pilots and their respective deputies belonging to this state, shall use their utmost endeavours to hail every vessel coming into this state from sea, and shall ask and demand of the master or commander of every such vessel, whether he has on board any person or persons, sick or infected with the yellow fever, or any other contagious distemper, or whether such vessel comes from any place where infectious distempers prevail; and being answered in the affirmative, shall immediately give notice to the commander of such vessel of the penalty aforesaid, and forbid his going any further with his vessel than Bedlow's Island, and that he is to anchor his vessel there, until he shall have further directions from the governor, or person administering the government for the time being, or in his absence from the said city, from the mayor thereof; and shall also forbid such commander from putting on shore any person who belonged to, or performed the voyage in such vessel, and from unloading or putting on board any other vessel, any person or persons, or goods and merchandize out of his said vessel, under the penalty aforesaid; and any branch pilot or such deputy, neglecting his duty therein, shall respectively forfeit the sum of fifty pounds for every offence; and if any person or persons shall come on shore with such vessel (unless first permitted and licenced by the governor, or person administering the government for the time being, or in his absence from the said city, by the mayor aforesaid) it shall and may be lawful to use all necessary force and constraint to compel such person or persons to return on board the said vessel, or to dispose of him or them in some suitable place, in order to prevent the infection from spreading.

III. And be it further enacted by the authority aforesaid, That if the commander of any vessel, having any person or persons on board, sick or languishing under any of the aforesaid distempers, or coming from any place infected therewith, shall not make a true discovery thereof, when thereunto required as aforesaid, such commander shall forfeit the sum of two hundred pounds for every such offence; and the governor, or person administering the government for the time being, is hereby authorized and empowered, by and with the advice and consent of the council of appointment, to appoint a physician to inspect all vessels which may have on board, or which may be suspected of having on board, any person or persons infected with a contagious distemper; and it shall and may be lawful to and for such physician, and he is hereby authorized and required to enter on board all and every vessel and vessels coming into this state under the circumstances aforesaid, and there to make strict search, examination and inquiry into the health, state and condition of the master, passengers and mariners of such vessels respectively, and to report his discovery and opinion thereupon without delay, to the governor, or person administering the government for the time being, or in his absence from the city of New-York, to the mayor of the said city; and if any person or persons whomsoever, shall presume to hinder or obstruct the said physician in performing the duties required of him by this act, such offender shall forfeit for every such offence, the like penalty of two hundred pounds, lawful money aforesaid; and the said physician shall be entitled to, and shall

Pilots to hail vessels coming from sea, and to ask if they have any infectious disorders.

Commander of any vessel not making true discovery, to forfeit goal.

How vessels are to be inspected.

Any person obstructing inspection, to forfeit goal.

receive from the commander of every vessel to be visited by him in pursuance of this act, the sum of twenty-eight shillings for his services in making such examination, and reporting thereupon.

IV. *And be it further enacted by the authority aforesaid*, That it shall be, and is hereby made the duty of the master and wardens of the port of New-York, to give their utmost aid and assistance in carrying this law into effect, and in their own names, to sue and prosecute for all the penalties which shall arise, accrue, or become forfeited, by virtue of this act; and to apply the same for the use and support of the light-house established at Sandy-Hook, for the security of commerce.

C H A P. LIX.

An ACT for granting Relief to Heirs, Executors, Devisees and Legatees, and for other Purposes therein mentioned.

Passed 10th May, 1784.

WHEREAS it is represented, that in the course of the late war between Great-Britain and the United States of America, many things have been done and transacted by executors who remained within the British lines, against the express intention of their respective testators, and in violation of the rights of orphans and widows, whose distresses demand the attention of the legislature;

I. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,*

Where trustees, executors, or others, under a will or by virtue of letters of administration, have received the whole or part of any estate, and not accounted for it, and have left this state.

That where any trustees, executors; devisees, legates, or persons whatsoever, under any last will or testament, or by virtue of letters of administration, have enjoyed, used or received the whole or any part of the real or personal estate of their testators or intestates respectively, or the rents, issues or profits thereof, for which they have not rendered a due account, nor made due satisfaction to other parties in trust

or interest under the same last will or testament, or as lawful representative or representatives of the same intestate, and have withdrawn themselves out of this state, antecedent to the time of passing this act, the remaining trustees, executors or parties interested in whatsoever manner, under such last will or testament, or otherwise, as legal representatives of the testator or intestate, may proceed against such absent trustees, executors, devisees, legates or other persons, by filing a bill in the court of chancery of this state; and if any defendant or defendants in such suit, against whom any subpoena or other process shall issue, shall not cause his, her or their appearance to be entered upon such process, within such time, and in such manner as, according to the rules of the court, the same ought to have been entered in case such process had been duly served, and an affidavit or affidavits shall be made to the satisfaction of the said court, that there is just ground to believe that such defendant or defendants is or are not within the state, and was or were not to be found so as to be served with such process; then, and in such case, the said court may make an order, directing and appointing such defendant or defendants to appear at a certain day therein to be named, and a copy of such order shall, within fourteen days after the same has been made, be inserted in one or more of the news-papers printed in this state, for such term as the court shall direct, not exceeding eighteen months, and which term shall expire

before the time limited in such order for the appearance of such defendant or defendants, and another copy thereof shall be affixed up, within the same term, upon one of the doors of the court-house in the county where such defendant or defendants did last usually reside; And if the defendant or defendants do not appear within the time limited by such order, or within such further time as the court shall appoint, then, on proof made of such publication of such order as aforesaid, the court being satisfied of the truth thereof, may order the plaintiff's bill to be taken pro confesso, and may make such decree thereupon, as shall be thought just, and may thereupon issue process to compel the performance of such decree, either by an immediate sequestration and sale of the real personal estate and effects of the party so absenteing (if any such can be found) or such part thereof as may be sufficient to satisfy the demands of the plaintiff or plaintiffs in such suit, or otherwise, as the nature of the case shall require: And the said court may likewise order such plaintiff or plaintiffs to be paid and satisfied, his, her or their demands, out of the estate or effects so sequestered and sold, or otherwise, according to the true intent and meaning of such decree. Provided, That it shall be in the discretion of the said court, in cases which shall appear to the said court to render such a provision just and necessary, to give a day to such absent persons, or their representatives, not exceeding eighteen calendar months from the time of making such decree, to apply to the said court for a re-hearing and revival of the same; and also to require of the plaintiff or plaintiffs, sufficient security in such sum as the court shall think proper, to abide such order, touching the restitution of such estate or effects, or the money arising from such sale as the court shall think proper to make concerning the same, upon the defendant or defendants appearance to defend such suit, and paying such costs to the plaintiff or plaintiffs, as the court shall order: But in case such plaintiff or plaintiffs shall refuse or neglect to give such security as aforesaid, then the said court shall order the estate or effects so sequestered, or the money arising from the sale, to remain under the direction of the court, either by appointing a receiver thereof, or otherwise as to the said court shall seem meet, until the appearance of the defendant or defendants, to defend such suit, and his, her or their paying such costs to the plaintiff or plaintiffs as the said court shall think reasonable, or until such order shall be made therein as the court shall think proper. Provided also, That if it should happen that an attachment should have been sued out while such cause is depending in the said court of chancery, against the estate and effects of such absent persons according to any law of this state, in such case made and provided; then, and in such case, it shall only be the duty of the said court to ascertain by their decree, the sum or sums of money due to the plaintiff or plaintiffs (unless the demand of such plaintiff or plaintiffs be of some real estate, held in trust for his, her or their benefit, for the possessing and disposing whereof, the aid of the said court may be necessary) and such plaintiff or plaintiffs shall be entitled to his, her or their proportion in the distribution of the estate and effects of such absent person or persons, according to the sum or sums ascertained in the said decree, and in common with the other creditors of the said absent persons, according to any law of this state as aforesaid: And in case the time for making such distribution according to law, shall arrive before such decree shall be made as aforesaid, it shall, in such case, be the duty of the trustees appointed pursuant to such law, on due notice to them from the plaintiff or plaintiffs, of such suit depending in the said court, to take sufficient security from the creditors, for whose benefit such distribution shall be made, so refuse

to much of their respective shares as may be necessary to satisfy such plaintiff or plaintiffs, for his or their dividend of the proportion or proportions of the estate and effects of such absent persons, to which he, she or they may become entitled by the decree of the court aforesaid, to be made as aforesaid.

II. And whereas in some cases special powers have been granted by testators to executors and trustees, in and by the last wills and testaments of such testators, to be exercised by the said trustees and executors, or the survivors of them jointly; which powers, by the removal of some of the said trustees or executors from the state, cannot now be executed agreeable to the intentions of such testators; *Be it enacted by the authority aforesaid*, That where two or more trustees or executors have been appointed, by any will or wills, within this state, with joint power to execute and perform certain trusts therein contained, and one or more of such trustees or executors have left this state, without discharging the duty or duties required of them by the said wills respectively, agreeable to the intentions of the testators thereof; that in such case the trustee or trustees, executor or executors now remaining in this state, and the survivors and survivor of them shall have, and is and are hereby invested with all the powers and authorities in the said wills respectively contained, as if all the trustees or executors named in such wills respectively, were personally present.

III. And whereas by the circumstances of the late war, trustees and executors under last wills have, in many instances, suffered the times in and by the said last wills limited for the sale of real estate belonging to their testators respective to lapse without making the said sale, pursuant to the authority to them for that purpose given, whereby they can no longer perform the trusts incumbent upon them, according to the said last wills, without application to the court of chancery for an extension of the time limited, which would be productive of delay and expence; *Be it therefore further enacted by the authority aforesaid*, That where the time limited by any last will within this state, for the sale of any real estate belonging to the testator, has expired at any time since the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, and before the passing of this act, it shall and may be lawful to and for the person to whom such power was given, or such of the said persons as now remain within this state, the survivors or survivor of them, to carry into execution the said trusts, as though the time so limited had not expired; and that the time mentioned in any such last will for the execution of such trusts, shall be deemed and taken to commence on the first day of May next ensuing.

IV. And whereas during the time which the southern district of this state was in possession of the fleets and armies of the king of Great-Britain, many wills were proved and letters testamentary were granted in the said district, by or under authority derived from the said king: And whereas it is necessary, for the benefit of widows and orphans, to confirm the said proceedings; *Be it enacted by the authority aforesaid*, That all and every probate or probates, or letters testamentary, issued or granted out of the office of any person or persons residing in the southern district of this state, and deriving authority from or under the king of Great-Britain for that purpose, from and between the fifteenth day of September in the year one thousand seven hundred and seventy-six, and the

twenty-fifth day of November, in the year one thousand seven hundred and eighty-three, is, and are hereby declared to be confirmed and made valid in the law, to all intents, constructions and purposes whatsoever, in like manner as if the said probates, or letters testamentary, and every of them, had been granted or issued by any officer acting under the authority of the people of this state; unless the person or persons who may conceive themselves aggrieved by such probate or probates, or letters testamentary, shall, within eighteen calendar months from the passing of this act, file a caveat in the office of the judge of probates of this state, against the confirming of such probate or letters testamentary, and procure to be issued out of the said court of probates, a citation, citing the parties interested under such probate or letters testamentary, to appear before the judge of probates, in order that a full hearing may be had thereon, and justice done therein. Provided, That the

Original wills, probates, and letters testamentary, to be recorded in the probate office.

original wills, probates, and letters testamentary as aforesaid, respectively, be recorded in the probate office of this state, for the information of all such persons whom it may in any wise concern, as in other cases where wills have been proved according to law.

V. *And be it further enacted by the authority aforesaid,* That nothing in this act contained, shall be deemed or construed in any manner to extend to, or affect any real or personal estate which may be vested in the people of this state, by the attainder or conviction of any person or persons whatsoever.

C H A P. LXIII.

An ACT for granting certain Lands promised to be given as Bounty Lands, by Laws of this State, and for other Purposes therein mentioned.

Passed 11th May, 1784.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,

Commissioners appointed to grant lands promised as bounty lands.

That his excellency the governor, or person administering the government of the state for the time being, the lieutenant-governor, the speaker of the assembly, the secretary of the state, the attorney-general, the treasurer, and the auditor thereof respectively for the time being, shall be, and they are hereby constituted and appointed commissioners for granting certain lands promised to be given as bounty lands, by laws of this state herein after particularly mentioned; and that all and every of the powers and trusts to be vested in the said commissioners by virtue of this act, shall and may be lawfully executed by any three of them, the governor, or person administering the government for the time being, always to be one thereof.

Persons entitled to lands under certain acts, to produce certificates.

† 4th sess. ch. 32.

II. *And be it further enacted by the authority aforesaid,* That whenever any person, or the legal representative or representatives of any person entitled to grants of land by virtue of the act, entitled, † An act for raising two regiments for the defence of this state, on bounties of unappropriated lands, passed March 20th, 1781, or by virtue of an act, entitled, † An act for raising troops to complete the line of this state in the service of the United States; and the two regiments to be raised on bounties of unappropriated lands, and for the further defence of the frontiers of this state, passed March the 23d, 1782, or by virtue of another

† 5th sess. ch. 22.

† 6th sess. ch. 26.
Purport of such certificate.

act, entitled, † An act to enable John Cochran, Esquire, to locate two thousand acres of waste and unappropriated lands within this state, passed March the 8th, 1783, shall produce a certificate from the surveyor-general of this state to the said commissioners, certifying that the person therein named, is entitled, by virtue of the said acts, or either of them, to the quantity of land in such certificate mentioned and described; that the same is laid out as nearly in a square as the circumjacent patented lands will admit of, or is laid out as nearly in a square as local circumstances will admit of, or is laid out in a square, as the case may be; that the same is not, to the best of his belief and information, then granted to, or located by any other person by virtue of any of the before recited acts; that it was not occupied and improved by any person, on or before the 25th day of July, in the year one thousand seven hundred and eighty-two; that it is no part of the land by this act reserved to the use of the people of this state; the said commissioners shall thereupon direct letters patent to be made out, and the governor shall affix the great seal of this state thereto. Provided always, That if any caveat shall be entered in the secretary's office by any person whatever claiming lands so located, that the said commissioners shall decide on the principles of equity and good conscience, if such location shall be valid or not; first giving timely notice to the parties, to appear and be heard by themselves or by council on their behalf; and if the location shall by the said commissioners be deemed void, the person having made the same may locate other ungranted and unappropriated lands, as though no location had ever been made.

Locations containing greater or less quantities than they ought, to be reduced or extended by surveyor-general.

III. *And be it further enacted by the authority aforesaid,* That if any tract of land described in any location already entered, or to be entered in the surveyor-general's office, shall appear, upon actual survey, to contain a greater or a less quantity of acres than the person having located, or who may hereafter locate, is entitled to, it shall be the duty of the surveyor-general to reduce or extend the bounds of such tract, as the case may require; or if the lands so located do not lay as nearly in a square as circumstances will permit, the said surveyor-general shall reduce the bounds to a square, or as nearly to a square as may be.

† 6th sess. ch. 11.

IV. And whereas by a law of this state, entitled, † An act to prevent grants or locations of the land therein mentioned, passed the 25th July, 1782; certain lands were intended to be reserved to the use of the state: And whereas such lands were not otherwise described in the said law, than as lands "theretofore reserved and applied for public uses:" And whereas the terms "reserved and applied for public uses," are not only doubtful and indefinite, but no specific quantity of land is directed to be set apart adjacent to places intended to be "reserved and applied" as aforesaid, and lands supposed to be intended by the said act to be reserved, and other lands adjacent thereto, were actually located by virtue of the said first mentioned act, before the passing of the said last mentioned act; and the surveyor-general having no definite directions how to conduct himself in the premises; to explain and remedy which, *Be it further enacted by the authority aforesaid,* That the said surveyor-general be, and he is hereby inhibited from granting any certificate for either of the several tracts of land herein after particularly specified, or for any part thereof; that is to say, He shall not grant any certificate for a certain tract of land adjoining the south

Surveyor-general inhibited from granting certificates for lands hereby particularly prescribed.

end of Lake-George, within two miles of the fort called Fort-George; for a certain tract of land at Tyconderoga, comprehended by the limits following; bounded southerly and easterly by part of the waters of Lake-Champlain, northerly and westerly by patented lands; for a certain tract of land at Crown-Point, comprehended within the limits following, to wit; Bounded on the west, north and east, by Lake-Champlain; on the south by a well line from the waters of Lake Champlain, on the east of the peninsula, so as to comprehend all the vacant lands on the said peninsula; for a certain tract of land at a peninsula adjoining Lake-Champlain, commonly called Point-Aufer, bounded on the south, east and north, by Lake-Champlain, and on the west by a line across the said peninsula, on such course as the said surveyor-general shall judge most eligible, so as to comprehend five hundred acres of land; for two certain tracts of land adjoining Lake-Ontario, where the Onondago river falls into the said lake, running from the mouth of the said river, and on both sides thereof, as the same runs, one mile; then extending northerly and southerly one mile, with a line perpendicular to the general course of the river within the said mile; thence westerly, with the said general course to Lake-Ontario; thence northerly and southerly to the places of beginning; for a certain tract of land adjoining the water communication between Lake-Erie and Lake-Ontario, and to be bounded on the east by a line across a pond, one mile distant from the most easterly inclination of the said water communication, on a perpendicular to the general course of the said communication, and to extend from the said pond to Lake-Ontario on the one side, and to Lake-Erie, or to the north boundary line of Pennsylvania, as the case may be, on the other side. For a certain ore-bed lying about eight miles north of Crown-Point, adjoining to Lake-Champlain, commonly called Skeene's ore-bed; for all that certain piece of land adjoining the falls, commonly called Oswego-Falls, on the Onondago river, beginning twenty chains above where the battaux were heretofore usually taken out of the said river, to be carried across the portage, and extending down the said river twenty chains below where the battaux were usually put into the said river, after having been transported over the said portage, and extending north-easterly in every part between the said two places, ten chains from the said river; nor shall any such certificates be granted by the said surveyor-general for any unpatented lands laying in the southern district of this state, and for no lands vested in the people of this state, as confiscated or forfeited by the attainder or conviction of any person whatsoever; and that the lands so inhibited from being certified as aforesaid, shall be, and hereby are reserved to the use of this state; any law to the contrary notwithstanding.

Which lands are reserved for the use of the state.

V. *And be it further enacted by the authority aforesaid,* That every survey to be made of any lands located, or to be located by virtue of the said acts, or either of them, shall be performed by the surveyor-general, at the expence of the party who located, or may hereafter locate, and that no more than twenty shillings per day shall be taken by the said surveyor-general, for each day he may be employed in and about such survey, making the maps, and in travelling to make such survey, and in returning therefrom, except as in the said acts is excepted.

VI. *And be it further enacted by the authority aforesaid,* That all certificates of inlistment given by any person appointed by his excellency the governor to muster men, to be raised by virtue of any of the said laws, shall be accepted by the surveyor-

Certain certificates to be accepted by surveyor-general.

general as though such persons had been appointed by virtue of any law of this state.

VII. *And be it further enacted by the authority aforesaid,* That the lands herein reserved to the use of this state, and laying adjoining to Lake-George, Ticonderoga and Crown-Point, shall and may by the said commissioners be leased unto any citizen or citizens of this state, for a term of years not exceeding twenty-one years, and on such terms and conditions as the said commissioners shall deem most beneficial to the interest of this state.

[The eighth section of this act is repealed, 8th sess. ch. 23. sec. 2. And both the eighth and ninth sections of this act are repealed, 9th sess. ch. 67. sec. 36.]

Reciting, that a certain tract of country was set apart for the troops of this state;

X. And whereas by a law of this state, entitled, An act to prevent grants or locutions of the lands therein mentioned passed the 25th July, 1782, a tract of country was set apart within which the troops of the line of this state, lately serving in the army of the United States, were to be provided with lands: And whereas on the twenty-seventh day of March, in the year one thousand seven hundred and eighty-three, by concurrent resolutions of the senate and assembly, a certain quantity of land was promised to each of the officers, non-commissioned officers and privates, and other persons designated in the said concurrent resolutions;

Be it therefore further enacted by the authority aforesaid, That the said commissioners, shall, by advertisement, to be published in one or more of the news-papers of this state, require returns to be laid before them of all persons or their legal representatives entitled to lands by virtue of the said act or concurrent resolutions; and having decided thereon, shall certify the names of such persons as shall appear to them to be entitled to lands, thereby specifying the quantity of land to the surveyor-general, under the hand of the governor, which certificate shall also designate in what part of the tract of country the land mentioned in such certificate shall be laid out, and thereupon the surveyor-general shall immediately proceed to lay out the same in townships of twenty-four thousand acres; and in a square form, or as near to a square as circumstances will permit; and shall also subdivide such townships into lots of two hundred acres each, on a map or maps, and shall transmit a copy of such map or maps to the commissioners aforesaid, who shall thereupon proceed by ballot to determine to whom each lot so laid out shall belong; and the governor is hereby authorised to grant letters patent for the respective lots, as herein before directed, and the secretary of the state is hereby required to transmit the names of the persons who shall so become entitled to lots, with the number of the lot designated for each, and the number and name of the township in which such lots lay, to the surveyor-general.

XI. *And be it further enacted by the authority aforesaid,* That all the officers, non-commissioned officers and privates, which belonged to the regiment of artillery commanded by colonel John Lamb, on the first day of January, in the year one thousand seven hundred and eighty one, and such of them as continued in service to the end of the war, or their legal representatives, shall be entitled to the same quantity of land as other officers, non-commissioned officers and privates are entitled to by the said concurrent resolutions of the senate and assembly, passed the 27th day of March, 1783.

[The twelfth section of this act is repealed, 9th sess. ch. 67. sec. 36.]

Persons entitled to
lands to exhibit their
claim by a given day.
See 12th sess. ch. 44.
sec. 2.

XIII. *And be it further enacted by the authority aforesaid,* That no person or persons whatsoever shall be entitled to lands by virtue of the said act or resolutions, unless such person or persons shall respectively exhibit their claim or claims for such lands to the commissioners aforesaid, on or before the first day of May, in the year one thousand seven hundred and eighty-five.

XIV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said commissioners to direct the surveyor-general to lay out such a number of townships of unappropriated and unoccupied lands for the Canadian and Nova-Scotia refugees, upon a return signed by brigadier-general Moses Hazen and colonel James Livingston, or either of them, on the part of the Canadian refugees, and colonel Jeremiah Throop on the part of the Nova-Scotia refugees, at such place in the northern part of this state as they shall think proper, not exceeding one thousand acres to each of the commissioned officers, and five hundred acres to each other person or persons, refugees as aforesaid. Provided nevertheless, That the said commissioners shall not grant any lands to any of the said Canadian or Nova-Scotia refugees, unless it shall appear to them, by satisfactory proof, that such refugees had respectively actually left Canada or Nova-Scotia before the first day of November, in the year one thousand seven hundred and eighty-two, and have respectively resided within this state for the term of two years next preceding the said day last mentioned: And the governor shall direct letters patent to be issued accordingly, to the said person or persons respectively, on his or their paying to the surveyor-general, their proportion of the expence of running out the lines of the said townships, and the patent fees, as is directed by the act, entitled, † An act to encourage the settle-

‡ 7th sess. ch. 60.

ment of the waste and unappropriated lands within this state.

XV. *And be it further enacted by the authority aforesaid,* That the lands hereby directed to be granted to the said refugees as aforesaid, shall be subject to the same conditions of settlement and forfeitures, as the lands to be granted by virtue of the act aforesaid, entitled, An act to encourage the settlement of the waste and unappropriated lands within this state.

After surveyor-general has laid out such lands, commissioners to determine to whom each lot shall belong.
Altered 9th sess. ch. 67. sec. 34.

XVI. *And be it further enacted by the authority aforesaid,* That when the surveyor-general shall have laid out the quantity of land agreeable to such directions as he shall receive from the commissioners, by virtue of the two last preceding clauses of this act, and made a subdivision thereof, into lots of two hundred and fifty acres each, on a map or maps, and shall have transmitted a copy of such map or maps to the commissioners aforesaid, the said commissioners shall thereupon proceed by ballot, or otherwise, as to them shall seem best, to determine to which of the said persons contained in the returns of the said general Hazen, colonel Livingston, or colonel Throop, the lots respectively shall belong.

XVII. *And be it further enacted by the authority aforesaid,* That the commissioners appointed by an act, entitled, An act to encourage the settlement of the waste and unappropriated lands within this state, or any three or more of them, the governor, or person administering the government, being always one, are hereby authorized to direct the surveyor-general of this state, to lay out so much of the said lands into townships, and in such manner, as to the said commissioners, or any three or more of them, the governor, or person administering the government always being one, shall appear to be most for the interest of the state; and the surveyor-general is hereby directed

to conform himself, in all things respecting the laying out and surveying of the said lands, to such orders as he, from time to time, may or shall receive from the said commissioners as aforesaid.

C H A P. LXIV.

Amended,
1st sess. ch. 49. 9th
1st sess. ch. 58. 11th sess.
ch. 90.

An ACT for the speedy Sale of the confiscated and forfeited Estates within this State, and for other Purposes therein mentioned.

Passed 12th May, 1784.

WHEREAS the public exigences require, that the goods and chattels, lands and tenements which have been forfeited to, and are now vested in the people of this state, by attainder or conviction, in the progress of the late war, should be sold and converted into money, and otherwise applied for sinking and discharging the public securities:

1. *Be it therefore enabled by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That the person administering the government of this state for the time being, shall be, and is hereby authorised and required, by and with the advice and consent of the council of appointment, to appoint during the pleasure of the said council, and to commission under the great seal of this state, seven commissioners of forfeitures, viz. Two commissioners for the southern district; one other commissioner for the middle district; three commissioners for the western district, and one commissioner for the eastern district: That it shall and may be lawful, to and for the said commissioner or commissioners of forfeitures to be appointed by virtue of this act, for the respective districts of this state, and they are hereby authorised and required, from time to time, to sell and dispose of all lands, tenements, hereditaments and real estate, within their respective districts, heretofore confiscated and forfeited to the people of this state in manner herein after directed, and to make, seal and deliver to the purchaser or purchasers respectively, or to their respective heirs or assigns, good and sufficient deeds and conveyances in the law, to vest the same in him or them respectively: That every such purchaser and purchasers, his, her and their heirs and assigns, shall, by virtue of such deed and conveyance respectively, be so vested in title, seisin and possession of the lands, tenements and hereditaments so purchased, as to have and maintain, in his, her or their name or names, any action for recovery thereof, or damages relating thereto, any actual seisin or possession thereof, in any other person or persons notwithstanding: That every such deed and conveyance shall be deemed to operate as a warranty from the people of this state, to the purchaser or purchasers respectively, and their respective heirs and assigns, for the lands, tenements and hereditaments so to be respectively granted and conveyed, against all claims, titles and incumbrances whatsoever; and such purchaser or purchasers respectively, and their respective heirs and assigns shall, in case of eviction, have such remedy and relief upon such warranty, as is consistent with good faith, in such manner as shall be provided for by future act or acts of the legislature; and if judgment in a due course of law shall be obtained for any lands, tenements

Who are to sell confiscated estates and execute deeds to purchasers.

Such deed to operate as a warranty from the state, against all claims.

Office of commissioners of forfeitures ceased 1st September, 1793, and the Surveyor-general vested with the authority to sell and dispose of confiscated estates, 11th sess. ch. 90.

or hereditaments which shall be sold by virtue of this act, against any person or persons having derived title thereto, from or under the people of this state, or either of the said commissioners, the person or persons having so obtained judgment, shall not have any writ of possession, nor obtain the possession of such lands, tenements or hereditaments, until he, she or they shall have paid to the person or persons possessing the title thereto, derived from or under the people of this state, or the said commissioners, or either of them, the value of all improvements made thereon after the passing of this act, as the same shall be estimated, valued and ascertained by two or more appraisers; which appraisers shall be by rule for that purpose appointed, by the court in which such judgment shall have been obtained, unless the parties shall agree on the value of such improvements, or agree on and submit to appraisers to value the same.

Commissioners to sell
either at private sale
or public vendue.

II. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the said commissioner or commissioners of forfeitures, and they are hereby fully authorized to sell and dispose of all the confiscated and forfeited lands, tenements and hereditaments within their respective districts, at public vendue, to the highest bidder or bidders, or at private sale, or by either of the said modes which he or they may deem to be most beneficial to this state; and that the same shall be sold in such parcels as the commissioner or commissioners shall from time to time think proper; first giving six weeks notice of the sale or sales so to be made by public vendue, in two or more of the public news-papers of this state, containing a description as to the quantity, by estimation, of the lands, tenements and hereditaments to be sold, the situation thereof, and the name or names of the person or persons, by the attainder or conviction of whom the said lands, tenements and hereditaments are deemed to have become forfeited. Provided always, That such lands, tenements and hereditaments shall, in the first place, be put up for sale at public vendue, and that if the commissioner or commissioners selling the same, shall deem that the highest bidder hath not bidden a sum equal to what such commissioner or commissioners shall conceive to be the true value thereof, or nearly so, that then he or they shall adjourn the sale to a future day; and if at such future day he or they shall not be able to procure what shall be deemed by him or them to be the value thereof, or nearly so, he or they shall no longer be bound to expose the same at public vendue, but may proceed to dispose of the same by private contract and sale, first duly advertising the same as is herein after directed with respect to unimproved lands to be sold at private sale in the eastern and western districts: And provided also, That if the said commissioner or commissioners for the said eastern and western districts, shall deem it prejudicial to the interest of this state, to sell and dispose of the unimproved lands, or any part thereof, in the said districts, at public vendue, he or they are hereby authorized to sell and dispose of the same at private sale in the first instance; first advertising in two of the public news-papers of this state, for four weeks, the lands so intended for sale, and the times and places when and where they will attend to treat for the sale thereof.

Where forfeited
lands are mortgaged,
commissioners shall
sell the equity of re-
demption only.

III. *And be it further enacted by the authority aforesaid,* That in case any of the said forfeited lands, tenements or hereditaments, shall appear to the said respective commissioners to be legally charged, or incumbered by mortgage duly executed before the ninth day of July, in the year one

thousand seven hundred and seventy-six, to or for the use of any person or persons not attainted or convicted; the said respective commissioners shall, in manner aforesaid, sell and dispose of the equity of redemption of such mortgaged premises only: That every assignment by any person or persons, attainted or convicted as aforesaid, to a person or persons not attainted or convicted, of a mortgage legally charged on any of the forfeited lands, tenements or hereditaments aforesaid, by the person under whose attainder or conviction the said lands, tenements or hereditaments became forfeited, shall be deemed and adjudged to be good and valid: Provided, That it shall be

proved, by competent witnesses, to the satisfaction of the chancellor, or any of the justices of the supreme court, that the said assignment was duly executed in due form of law prior to the ninth day of July, in the year last aforesaid; and in such case the said respective commissioners shall, in like manner, sell and dispose of only the equity of redemption of such mortgaged premises: And where any such lands, tenements or hereditaments, shall be claimed to stand charged

and incumbered by mortgage, made or executed between the said ninth day of July, in the year one thousand seven hundred and seventy-six, and the time when, in virtue of any attainder or conviction, the same became forfeited to

the people of this state, it shall and may be lawful to and for the chancellor of this state, and he is hereby authorized and required, on the petition of the commissioner and commissioners having the charge thereof on the part of the state, and of the claimant under such mortgage or pretended mortgage, or either of them, to proceed in a summary way to enquire into the merits of such claim, and after hearing the parties, to make a final decision thereupon; and if by such decision the mortgage shall be decreed to be valid, the commissioner or commissioners shall, in manner aforesaid, sell and dispose only of the equity of redemption thereof: And all mortgages made or executed by any person or persons attainted or convicted as aforesaid, to another person in like manner attainted or convicted, shall be, and hereby are declared to be, to all intents, constructions and purposes, null and void; and it shall be lawful to and for the respective commissioner or commissioners, having the care of any forfeited lands, tenements or hereditaments, claimed to be subject to, or incumbered by such mortgage, to proceed to the sale, disposal, grant and conveyance thereof, in the same manner as he or they could or ought to have done, if no such mortgage ever had been made or executed; and if it shall appear to the said commissioner or commissioners, that any forfeited lands, tenements or hereditaments within his or their districts respectively, stand charged or incumbered by judgment or judgments legally obtained or recovered in any court of record, prior to the said ninth day of July, in the year one thousand seven hundred and seventy-six, by, at the suit or for the use of, any person or persons not attainted or convicted as aforesaid, such judgment or judgments being in force and effect, and remaining unsatisfied, then, and in every such case, it shall and may be lawful to and for such commissioner or commissioners respectively, and he and they are hereby authorized and required, to sell, dispose of, grant and convey, in manner aforesaid, all such lands, tenements or hereditaments, subject and liable to such judgment or judgments, and incumbrances.

IV. And be it further enacted by the authority aforesaid, That whenever any claim shall be made by a person or persons, on any lands, tenements or hereditaments, forfeited to the people of this state, by the attainder or con-

vision of any person or persons, by contract or bargain, in writing, for the purchase of any such lands, tenements and hereditaments, made before the ninth day of July, in the year one thousand seven hundred and seventy-five, and not carried into complete execution, it shall and may be lawful to and for the chancellor of this state, to proceed in a summary way to enquire into the merits of such claim, in like manner as is directed in the preceding section in cases of mortgages, and to make a final decision thereon; and in case it shall be decreed that the whole purchase money has been paid for any such lands, tenements or hereditaments, it shall be the duty of the said commissioner or commissioners, to give a conveyance to the claimant for the premises; but if it shall be decreed that a part only of the purchase money has been paid by the claimant, the said commissioner or commissioners shall, on receiving the sum so decreed to be due, if paid in gold or silver within three months next after such decree, give a deed or conveyance for such lands, tenements or hereditaments, to such claimant: Provided nevertheless, That no claim as aforesaid, on any lands, tenements or hereditaments, forfeited as aforesaid, shall be admitted by the chancellor, unless the same be made within six weeks after the passing of this act, or before the lands, tenements or hereditaments on which such claim is made, are sold by the said commissioner or commissioners, and a certificate thereof signed by the said commissioner or commissioners, be produced to the said chancellor by the claimant, certifying that the lands, tenements or hereditaments, on which such claim is made, are not sold.

V. *And be it enacted by the authority aforesaid, That it shall and may be lawful for the said commissioner or commissioners to receive in payment, for any lands, tenements or hereditaments in and by this act directed to be sold, the following species of money, † certificates and other paper securities, except for the payment of lands, tenements and hereditaments herein after otherwise directed to be made; that is to say, gold or silver at its respective legal or current value; bills of credit emitted in pursuance of an act of this state, entitled, (a) An act for emitting monies upon the credit of this state, passed the 27th day of March, in the year 1781, for gold or silver; bills of credit emitted in pursuance of an act of this state, entitled, (b) An act approving of the act of congress of the 18th March, 1780, relative to the finances of the United States, and making provision for redeeming the proportion of this state of the bills of credit to be emitted in pursuance of the said act of congress, passed June 15th, 1780; bills of credit emitted by the authority of the provincial congress of this state, while it was a colony, and by the convention of this state, at the rate of one dollar in silver for every one hundred and twenty nominal dollars in such bills; bills of credit emitted by the authority of congress, or of the United States of America in congress assembled, at the rate of one dollar in silver for every one hundred and twenty nominal dollars in such bills; bills of credit emitted by the authority of the legislature of the late colony, now state of New-York, at the rate of one pound in gold and silver for every one hundred and twenty pounds nominal value in such bills; certificates issued by the treasurer of this state, for monies borrowed for the use of this state, and directed to be paid by an*

† Other certificates made receivable, 9th f. st. ch. 58. sec. 1.

‡ Not public securities, except those signed by the treasurer and auditor, receivable on sales of forfeited estates, made after 21st March, 1783. See 11th f. st. ch. 90. sec. 3.

(c) 3d sess. ch. 31. act, entitled, (c) An act to provide for the payment of certain contingent expences of this state, passed the 25th day of October, 1779, reduced to the value of gold or silver by the continental scale of depreciation; certificates issued by the agent of this state, in pursuance of an act, entitled, (d) 3d sess. ch. 69. act, entitled, (d) An act to procure supplies for the use of the army, and to prevent a monopoly of cattle within this state, and more effectually to prevent supplies of cattle to the enemy, passed the 24th day of June, 1780; certificates issued by the treasurer of this state in pursuance of an act, entitled, (e) 3d sess. ch. 73. act, entitled, (e) An act to provide for the payment of certain monies taken on loan by this state, passed the 30th day of June, 1780, at the rate of one dollar in silver for every forty of the nominal dollars specified in such certificates; warrants, with receipts thereon endorsed, given by virtue of the act, entitled (f) 3d sess. ch. 78. act, entitled, (f) An act to complete the continental battalions, raised under the direction of this state, passed the 1st day of July, 1780, at the rate of one dollar in silver for every bushel of wheat specified in such warrants; certificates granted for horses purchased by this state, for the use of the armies of the United States, in the year one thousand seven hundred and eighty; accounts liquidated and certified, or certificates granted by the late auditor-general of this state, or the auditor of the state for the time being, reduced to specie value (if not already so reduced) by the continental scale of depreciation; certificates issued by the auditors appointed in pursuance of the act, entitled, (g) 4th sess. ch. 7. act, entitled, (g) An act to liquidate and settle the accounts of the troops of this state in the service of the United States, passed the 4th day of October, 1780; certificates issued by the continental commissioner of loans in this state, for monies lent to the United States, reduced to their value in specie by the continental scale of depreciation; certificates given, or which may be given, by virtue of the act, entitled, (h) 7th sess. ch. 19. act, entitled, (h) An act to empower the auditors appointed to liquidate and settle the accounts of the troops of this state in the service of the United States, to grant certificates to the troops of this state in the service of the United States, for their pay accrued for the time therein mentioned, passed at this present meeting of the legislature; certificates given or to be given by the continental commissioner or commissioners of accounts within this state, for services performed, or articles delivered by the inhabitants of this state for the use of the United States; certificates given or to be given by the commissioners appointed by virtue of (i) 4th sess. ch. 20. act, entitled, (i) An act for the appointment of commissioners to procure monies on loan, and clothing for the use of this state, passed the 7th of March, 1781; certificates given or to be given by virtue of (k) 7th sess. ch. 45. act, entitled, (k) An act for the settlement of the pay of the levies and militia for their services in the late war, and for other purposes therein mentioned, passed at this present meeting of the legislature; and that the interest due, or to become due to the time of sale, shall be allowed to the person or persons so paying the same; and that all such of the said notes, certificates or securities herein before mentioned, and which are not negotiable, shall be, and hereby are declared to be negotiable from and after the passing of this act, any law to the contrary in any wise notwithstanding.

And the interest due thereon to be allowed.

Certificates not herebefore negotiable declared to be so hereafter.

Amount of payments in bills emitted by congress for lands

VI. And be it enacted by the authority aforesaid, That no greater or further sum in bills of credit emitted by the authority of congress, or of the United States of America

fold, limited to a certain sum.

in congress assembled, than the sum of five millions of dollars, in such bills, shall be received in payment for the lands, tenements and hereditaments directed to be sold by this act, and the act, entitled; An act to encourage the settlement of the waste and unappropriated lands within this state, passed at this present meeting of the legislature: And it is hereby made the duty of the said commissioner and commissioners, on the receipt of any sum in such bills, immediately to transmit an account thereof to the treasurer, who is hereby directed, whenever he shall find that such bills which he may have in the treasury, together with the like bills, which may be in the hands of the said commissioner or commissioners, will amount to the said sum of five millions of dollars, to order the said commissioner and commissioners not to receive any further sums in such bills, which order the said commissioner and commissioners are to observe; and the said treasurer shall not, after giving the said order, receive any further sum in such bills, in payment for waste and unappropriated lands directed to be sold, in and by the said act last recited.

Purchasers to pay one third of purchase money down.

VII. And be it enacted by the authority aforesaid, That whenever the said commissioner or commissioners shall make sale of any lands, tenements or hereditaments, by public vendue or private sale, the person or persons to whom such sale shall be made, shall immediately pay unto the said commissioner or commissioners the one-third part of the purchase money, and shall, with the said commissioner or commissioners, reciprocally subscribe a memorandum or note in writing of such sale and

And the remainder 1st June, 1735.

payment; and such person or persons shall, on or before the first day of June, in the year one thousand seven hundred and eighty-five, pay the remaining sum due on such sale mentioned in the said memorandum or note; upon which last payment, such person or persons, or his, her or their legal representatives, shall be entitled to deeds and conveyances for the lands, tenements

or hereditaments by him or them so purchased; and if the said last payment be in certificates or other paper securities bearing an interest, no interest shall be allowed or reckoned thereon, other than such as had accrued at the time of

Of failure of payment on the given day the first payment to be forfeited, and the lands sold again.

the sale of the lands, tenements or hereditaments aforesaid; and in case such last payment shall not be paid within the time above-mentioned, the said one-third part of the purchase money paid to the said commissioner or commissioners, shall be forfeited to the people of this state; and the said lands, tenements or hereditaments, shall be again sold at public vendue or private sale, in the manner by this act directed.

Monies and certificates received to be transmitted to the treasurer by commissioners, who are to account every six months.

VIII. And be it enacted by the authority aforesaid, That it shall be the duty of the said commissioner or commissioners, and they are hereby required, from time to time, to transmit to the treasury all such species of money, certificates and other paper securities, as he or they may receive in payment for the lands, tenements or hereditaments directed to be sold by this act; and shall, once in every six months, account with the treasurer for all such monies, certificates and other paper securities by him or them received in pursuance thereof.

IX. And whereas certain lands, tenements and hereditaments, which have become forfeited, and vested in the people of this state, are charged with the redemption of certain bills of credit emitted pursuant to the acts heretofore mentioned: And whereas the lands, tenements and hereditaments

charged in the southern district, are amply sufficient to redeem the whole of the said bills now in circulation; *Be it therefore enacted by the authority* *How, for what, and how much of the lands mortgaged for redeeming the new emission are to be sold,* *aforsaid,* That so much of the confiscated estates in the southern district of this state, as are charged with the redemption of the bills of credit emitted in this state, pursuant to an act, entitled, An act approving of the act of congress of the 18th of March, 1780, relative to the finances of the United States, and making provision for redeeming the proportion of this state of the bills of credit to be emitted in pursuance of the said act of congress; and of the bills of credit emitted pursuant to an act, entitled, An act for emitting monies upon the credit of this state, passed 27th of March, 1781, as will amount to the value of the said bills of credit now in circulation, with the interest due or to become due thereon, shall be sold by the commissioners of forfeitures for the southern district, and in the manner directed by the second section of this act; and that gold or silver, and the said bills of credit only shall be received in payment for the lands, tenements or hereditaments so to be sold; and that the said commissioners shall, by advertisement, to be published for eight weeks successively, in two or more of the news-papers to be printed in this state, describe the lands, tenements or hereditaments so by them to be sold, and mention the day or days on which such lands tenements or hereditaments will be exposed to sale: and the treasurer of this state is hereby required to furnish the said commissioners with an account of the amount of all the said bills of credit in circulation, with the interest due thereon, to enable the said commissioners to estimate the amount which will probably be necessary to redeem the said bills; That if the whole of the said bills shall not be received in payment for the lands tenements and hereditaments so to be sold for their redemption, the gold and silver arising from such sales, shall be, and hereby is appropriated to the redemption of such of the said bills as may not have been paid on such sales. And to the end that all the said bills of credit may be taken out of circulation, and the state relieved from the interest accruing thereon, it shall be the duty of the treasurer, as soon as he shall be vested with such a sum of money in gold or silver, arising from such sales as aforesaid, as he shall deem sufficient to redeem the said bills, to give notice thereof in two or more of the public news-papers printed in this state, requiring all holders of such bills to bring the same to the treasury for redemption, on or before a day to be mentioned in such notice, not less than fifty days from the date of such notice; and if any such bills shall remain in circulation after the said day, the interest thereon shall cease from and after such day, unless such bills should thereafter be paid for the purchase of unappropriated lands, or confiscated and forfeited lands, tenements or hereditaments in which the interest shall be allowed to the day of payment; any thing in this clause to the contrary notwithstanding.

The interest on bills remaining after the pay notified, to cease, except when paid for confiscated or unappropriated lands.

X. *And be it further enacted by the authority aforesaid,* That all the other lands, tenements and hereditaments charged with the redemption of the said bills of credit, other than those which are to be sold for the redemption aforesaid, shall be, and hereby are declared subject to sale, in like manner as other lands, tenements and hereditaments not so charged, are subject to by this act; any thing in the said two last recited acts to the contrary notwithstanding.

XI. And whereas the lands, tenements and hereditaments which have become forfeited to the people of this state, in the southern district, were not subject to sale for certificates granted in pursuance of the act, entitled,

† 4th sess. ch. 7.

† 5th sess. ch. 45.
Sec. 4.

Commissioners to sell
forfeited lands for cer-
tificates given for de-
preciation of pay.

Holders of military
certificates not apply-
ing for purchase in
sixty days after the
passing of this act, to
be precluded,

but shall receive their
value in specie.

Undivided lands,
how to be sold.

† An act to liquidate and settle the accounts of the troops of this state in the service of the United States, passed the 4th day of October, 1780, so long as the same should remain within the power of the enemy; And whereas by a subsequent † act of this state, the commissioners of forfeitures for the southern district were inhibited from selling the said lands tenements and hereditaments until the further order of the legislature; *Be it therefore enacted by the authority aforesaid,* That it shall and may be lawful to and for the commissioners of forfeitures in the southern district, and for the commissioner or commissioners of forfeitures respectively, in the other great districts of this state, to sell lands, tenements or hereditaments, for certificates granted in pursuance of the said act, passed the 4th day of October, 1780, or in pursuance of any other acts authorising the granting of certificates for depreciation of pay, and in the manner prescribed by the said act, except as to the time of payment, other than lands, tenements and hereditaments which are or were charged with the redemption of the bills of credit, commonly called the New Emission, any law to the contrary notwithstanding. Provided always, That applications for the purchase of such lands, tenements and hereditaments, by holders of such certificates as aforesaid, shall be made within the space of sixty days next after the passing of this act; and if such application shall not be made before the expiration of the said term, the holders of such certificates shall be precluded from any future purchases, agreeable to the said act passed the 4th of October, 1780; but shall, nevertheless, at any time thereafter, be entitled to receive the full value of the same in specie, with the interest which may be due thereon, according to the tenor of such certificate: And it shall and may be lawful to and for the said commissioner or commissioners, to sell, in the manner prescribed in and by the said act of the 4th of October, 1780, except as to the time of payment, and for the certificates granted in pursuance of that act, or other acts authorising the granting of certificates for depreciation of pay, any lands, tenements or hereditaments which may be vested in the people of this state, by the attainder or conviction of any person or persons, and which may be in common and undivided, other than the lands, tenements and hereditaments charged with the redemption of the bills of credit, commonly called the New Emission, as above mentioned, in case such commissioner or commissioners shall deem it expedient for the interest of the state, to sell such undivided lands, tenements and hereditaments; and in case the said commissioner or commissioners shall deem it necessary to cause a division or partition of such undivided lands, tenements or hereditaments to be made, in order to dispose of the same, it shall be lawful for the said commissioner or commissioners, after a division or partition of such lands, tenements or hereditaments shall be made as herein is after directed, to sell the estate which may be found to belong to the people of this state, in the same, in the manner, and for the certificates last aforesaid. Provided, That application for the purchase of such lands, tenements or hereditaments, by the holders of such certificates, is made within sixty days next after such division shall have taken place.

XII. *And provided further, and be it enacted by the authority aforesaid,* That any lands, tenements or hereditaments that shall be located as afore-

said, within either of the said terms of sixty days, shall be appraised at such price as the appraisers shall deem to be the value thereof at the time of such appraisement; and upon such appraisement being completed, the person or persons who located or applied for the same, shall, within two days, deliver to the commissioner or commissioners of the district, such certificates as above mentioned, in addition to the deposit made at the time of location, as will amount to the sum of such appraisement; and if the commissioner or commissioners of the district can, within ten days after the receipt of such certificates, sell or dispose of the same located and appraised lands, tenements or hereditaments, for any larger sum in specie, than the amount of the appraisement, he or they may sell or dispose of the same, and shall, in such case, within the same time, pay to the owner of the certificates who had so located thereon, the amount of the appraisement.

XIII. *And be it further enacted by the authority aforesaid,* That where any lands, tenements or hereditaments are become forfeited to the people of this state, by the attainder or conviction of any person or persons, and are held by leases in fee, leases for lives, leases for years, or by parol leases granted, or made by any person or persons in whom such estates were vested at the time of their being forfeited as aforesaid, or made by any person or persons, under whom persons attainted or convicted derived estate in fee, or for life in the same, the said commissioner or commissioners shall give the pre-emption

A Pre-emption of
purchase given to
tenants of forfeited
estates.

of purchase of such lands, tenements and hereditaments, to such tenant or tenants, on such terms and conditions as the said commissioner or commissioners shall deem, in equity and good conscience, to be the value thereof: And if such tenant or tenants shall refuse or neglect to purchase the same, the commissioner or commissioners shall proceed to sell the reversion thereof in the manner directed in and by the second section in this act. Provided

Provido.
Restricting pre-emp-
tion to certain cla-
sses.

§ 3d sec. ch. 25.

always, That no person shall derive any advantage or pre-emption as aforesaid unless he shall produce to the said commissioner or commissioners, such certificate as is directed by the nineteenth section of the act, entitled, † An act for the forfeiture and sale of the estates of persons who have ad-

hered to the enemies of this state, and for declaring the sovereignty of the people of this state, in respect to all property within the same, passed the 22d of October, 1779.

XIV. *And be it further enacted by the authority aforesaid,* That the commissioner or commissioners of forfeitures, to be appointed by virtue of this act, shall not be authorized to sell lands, tenements, hereditaments or real estate, in larger parcels than the quantity of five hundred acres in each parcel, unless in such particular cases, wherein the commissioner or commissioners shall deem it beneficial to the state to sell a larger tract; and that the sale at public vendue shall be made in the county where the lands, tenements, hereditaments or real estates to be sold respectively do lie.

XV. And whereas several lands, tenements, hereditaments and real estates were, at the time of passing of the act, entitled, An act for the forfeiture and sale of the estates of persons who have adhered to the enemies of this state, and for declaring the sovereignty of the people of this state, in respect to all property within the same, passed the 22d day of October, in the year 1779. and since the passing thereof, vested in the people of this state, by the attainder and conviction of divers persons, who claimed an interest in the same, as tenants in common, in fee simple, with divers other persons; And whereas

it is proper that some mode be provided for the more ready and speedy partition of such lands, tenements and hereditaments, between the people of this state and the said other persons; to the end that the divided share and interest of the people of this state in the same may, on such partition as may hereafter be made, be more readily disposed of; *Be it therefore enacted by the authority*

Partition of lands between the people of this state, and others interested in them, how to be made.

authority aforesaid. That the commissioner or commissioners to be appointed in manner above mentioned, for the sale in each district of this state, of all lands, tenements and hereditaments, lying in such districts respectively, shall, as soon as may be after their appointment and qualification as herein after mentioned, respectively publish, in at least two of the public news-papers of this state, an advertisement, notifying to all persons interested in the lands intended to be divided, and therein to be described, requiring them and each and every of them, to be and appear on a certain day, and at a certain place in the county wherein the lands to be divided do lie, which day shall not be sooner than six weeks after the date of the said advertisement, requiring such persons to appear, either by themselves or their attornies, sufficiently authorised for the purpose, at such time and place aforesaid, to agree with the said commissioner or commissioners, or persons to be appointed by consent of the said commissioner or commissioners and the said persons who shall so attend at the said meeting, by themselves or their attornies, as agents to make partition and division of the said lands, tenements and hereditaments; and in case the said commissioner or commissioners, and the said other parties who shall attend in manner aforesaid, shall agree on the appointment of such agents, they the said commissioner or commissioners, and the said other parties so attending as aforesaid, shall reduce the said agreement and appointment to writing, and severally and respectively subscribe the same with their names in the presence of two or more creditable witnesses, who shall also subscribe their names as witnesses thereto; which said agreement and appointment being duly acknowledged by the said commissioner or commissioners, and the said other parties, or duly proved by one or more of the said witnesses, before one of the judges of the inferior court of common pleas of the county in which the lands intended to be divided do lie, shall be recorded in the county records of such county, which shall fully authorise the said agents, or any two of them, or the survivor of them, to proceed to a fair and equal partition and division of such lands, tenements and hereditaments, first appointing a surveyor or surveyors, if necessary, to enable them to perform the service hereby required of them: That previous to the making of such partition and division as aforesaid, the said agents, or any two of them, shall thoroughly explore the premises to be divided, and make, or cause to be made, an accurate survey of the same, and run out and divide the same into such different allotments as will be best calculated most equally to divide the same, according to quantity and quality, among and between the people of this state and the said other parties, so as to vest the people of this state and the said other parties severally and respectively with their several and respective divided shares and parts of and in the same; and that the said allotments and divided shares, which shall thereupon fall to the said other parties severally and respectively, in severalty in fee simple, shall vest in them severally and respectively, and their several and respective heirs and assigns forever; and shall on the completion of the said partition and division, make or cause to be made two accurate maps and field books thereof, and subscribe the same with their several names, and cause one of the said maps and field books to

Maps and field books
to be made and filed
in two offices.

be filed in the office of the clerk of the county wherein the lands do lie, and the other map and field book in the office of the secretary of this state, which shall be and remain as full and conclusive evidence, in all courts of law and equity within this state, of such partition and division as aforesaid, as if the same had been made according to the due and ordinary course of common law; any thing in any former law, usage or custom to the contrary thereof notwithstanding.

XVI. *And be it further enacted by the authority aforesaid,* That in case the said other parties, or any of them, shall neglect to attend at such time and place of meeting as aforesaid, or attending, shall not agree with the said commissioner or commissioners in the appointment of such agents as aforesaid, that then and in such case, it shall and may be lawful for the said commissioner or commissioners, upon due proof thereof to be made before one of the judges of the inferior court of commons pleas of the county wherein the lands intended to be divided do lie, not interested in the said lands, such judge shall, without delay, proceed to appoint such agents for the purpose aforesaid, as he shall think proper, by writing under his hand and seal; which appointment shall be recorded by the clerk of the county in the county records; and the original thereof shall be also filed in the said clerk's office; which said record or original shall be full and conclusive evidence of such appointment, in all courts of law and equity within this state; and the said agents, so to be appointed by the said judge, shall, and are hereby authorized to do, execute and perform all and singular the services and duties herein appointed and prescribed to be done by the agents above mentioned, as if they had been nominated and appointed by the consent of parties, in manner aforesaid.

XVII. *And be it further enacted by the authority aforesaid,* That the said agents, whether appointed by the consent of the said commissioner or commissioners, and the other parties, or by such judge as aforesaid, shall, previous to any division to be made by them, lay out and set apart a sufficient quantity in the undisputed parts of the said lands, tenements and hereditaments so to be divided, to defray the expence of such partition and division as aforesaid; which they shall sell and dispose of at public vendue, in the county wherein the same shall lie, upon giving six weeks previous notice thereof, in at least two of the public news-papers of this state, after the partition and division shall be completed; and shall make, and in due form of law execute good and sufficient conveyances in the law, to vest the same to and in the purchaser and purchasers respectively, and their heirs and assigns forever, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law in fee simple; and upon completion of the partition and division aforesaid, and selling such maps and field books as above directed, give public notice, at least six weeks successively, in two or more of the public news-papers of this state, that at a certain day thereafter, and at a certain place in the county where the lands lie, to be therein mentioned, they intend that the allotments shall be balloted for in the presence of such of the said commissioner or commissioners, and the said other parties interested, as shall attend the same; and upon completing such balloting as aforesaid, shall note and mark, on the said maps and field books, the result of such balloting, as well as the lands laid out by them, to be sold for the defraying the expences of the partition and division, as also to ascertain, by name or names, what allotments respectively fall to the right of the people of this state, and the said other parties interested in the said lands, tenements and hereditaments respectively.

XVIII. *Provided always, and be it further enacted*, That in order to make such partition and division more equitable in case of any disputes concerning the extent of the boundaries of the said lands, tenements and hereditaments as aforesaid, the said agents shall, in every such case, make different allotments of disputed and undisputed lands, which shall be noted and marked in such maps and field books as aforesaid.

XIX. *And be it further enacted by the authority aforesaid*, That the said agents and their surveyor, chain-bearers and other necessary attendants, shall, over and above their necessary expences, be allowed to have and receive out of the sale of the lands, tenements and hereditaments set apart for defraying the expences of the partition and division, at and after the rates following, to wit: The agents twenty shillings each per day; the surveyor twenty shillings per day; each chain-bearer and necessary attendant, six shillings per day, for each day they shall severally be actually employed in such partition and division as aforesaid, and the completion thereof: That upon the completion of the sales of the lands, tenements and hereditaments so to be set apart for defraying the expences of such partition and division as aforesaid, the said agents shall make up and render in writing, an account of the expences of such partition and division as aforesaid, on oath, before one of the judges of the inferior court of the county wherein the said divided lands, tenements and hereditaments do lie; which account, together with the balance, if any shall remain in their hands, shall be deposited in the office of the clerk of the said county, and the clerk shall, from time to time, on application, pay and distribute such surplus among the respective proprietors, and in the respective proportions which shall be ascertained by a view of the respective rights and allotments in such partition and division as aforesaid; the said clerk retaining in his hands at and after the rate of five per cent. *Provided always nevertheless*, That it shall and may be lawful for the said commissioner or commissioners, to sell the estate which is vested in the people of this state, in any such undivided lands, tenements or hereditaments, without causing a division thereof to be made as is above directed, in case he or they shall deem the sale of such undivided estate expedient.

Powers of commissioners of sequestration repealed.
See 3d sess. ch. 52.

See 3d sess. ch. 52.

Said commissioners to be accountable.

See 8th sess. ch. 18.
Sec. 20.

XX. *And be it further enacted by the authority aforesaid*, That all and singular the powers and authorities vested in, and given to the several and respective commissioners of sequestration, by any former law or laws of this state, shall be, and hereby are absolutely repealed, annulled and made void, to all intents, constructions and purposes whatsoever; any thing in any of the said laws to the contrary thereof in any wise notwithstanding.

XXI. *Provided always, and it is hereby enacted by the authority aforesaid*, That the said commissioners of sequestration respectively, and their several and respective executors and administrators, shall be accountable for the due execution of their respective offices, in the manner directed and to be directed by any law or laws of this state, prior or subsequent to the passing of this act; saving nevertheless to the tenants to whom the said commissioners of sequestration have demised any forfeited estates for terms not exceeding one year, the residue of their said respective terms.

XXII. *Provided further, and be it enacted by the authority aforesaid*, That the monies which have arisen from the sales of sequestered property, made by the commissioners in the respective counties within this state, by virtue of any former law or laws of this state, shall be, and hereby are declared to belong to the people of this state.

XXIII. *And be it further enacted by the authority aforesaid,*

All forfeitures and
confiscations confirm-
ed.

That all forfeitures and confiscations of the lands, tenements hereditaments and real estate which heretofore have been, by virtue of any former law or laws of this state, against any person or persons whomsoever, on conviction for adhering to the late enemies of this state, or of this and the other United States of America, is, and are hereby, to all intents, constructions and purposes in the law whatsoever. fully and absolute-

Notwithstanding er-
rors in the proceed-
ings.

ly ratified and confirmed, notwithstanding any error or errors in the proceedings thereon, or in any wise relating thereto, and all writs of error and errors on any judgment hereto rendered relating thereto, are hereby forever barred.

XXIV. *And be it further enacted by the authority aforesaid,* That all purchases made at vendue, or otherwise, by the said commissioner or commissioners, of forfeitures to be appointed by virtue of this act, of any lands, tenements or hereditaments, forfeited to the people of this state, or any or either of them, or by any other person to or for the use of them, or any or either of them, shall be null and void.

XXV. *And be it further enacted by the authority aforesaid,* That each of the commissioners of forfeitures to be appointed by virtue of this act, before he enters upon the execution of his office, shall appear before one of the judges of the inferior court of any of the counties within the district for which such commissioner shall be appointed, and take and subscribe the following oath, which such judge is hereby authorized and required to administer, viz.

I appointed a commissioner of forfeitures for the district, do solemnly and sincerely swear and declare, in the presence of Almighty God, That I will faithfully and honestly execute the said office in such manner as I shall conceive most for the benefit and advantage of the people of this state, according to the true intent and meaning of an act, entitled, An act for the speedy sale of the confiscated and forfeited estates within this state, and for other purposes therein mentioned.

XXVI. *And be it further enacted by the authority aforesaid,* That the said commissioner or commissioners of forfeitures to be appointed by virtue of this act, shall make an abstract of all the sales by them made within their respective districts, to contain the names of the respective purchasers, the descriptions of the respective estates by them sold, and the sums for which the same were respectively sold, the dates of the respective conveyances, and the names of the several persons to whom the several estates immediately before the forfeiture thereof were deemed to belong; and shall at the end of every three months, file copies of such abstracts in the office of the clerk of the county wherein the lands, tenements, hereditaments and real estates by them sold, respectively do lie; and the clerks of the respective counties within this state, shall record such abstracts in a book or books by him to be provided for that purpose, and for which recording the several clerks shall be allowed at and after the rate of one shilling and six pence per folio, of one hundred and twenty-eight words, to be paid by the treasurer of this state, out of any public monies which shall, from time to time, be in his hands unappropriated, on certificates to be granted for the same by the said commissioner or commissioners.

XXVII. *And be it further enacted by the authority aforesaid,*

Sales and improp-
riations to be reported
to the governor.

That the commissioner or commissioners of forfeitures to be appointed by virtue of this act, shall, from time to time, make report to the person administering the government of

this state, of the sales by them respectively made, and of the impediments and difficulties which may arise in the execution of their said office, to be communicated to the legislature.

XXVIII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the commissioner or commissioners of forfeitures to be appointed by virtue of this act, in the respective districts for which they shall be appointed, to collect and receive all rents due from tenants on any of the forfeited estates, until the time of sale thereof, and to commence and prosecute, in their own names, any action or actions in assumpsit, for the recovery of such rents, with costs, against any person or persons from whom such rents are, were or shall become due or owing, or their respective executors or administrators, upon quantum valerint, for the use and occupation of the lands, tenements and hereditaments possessed by the said persons respectively; and upon the trial the jury shall find a verdict for the plaintiffs, for such sum as shall be proved to them would have been a reasonable rent for such lands, tenements and hereditaments, during the time they were possessed by the defendant or defendants; so as the damages to be assessed shall not exceed the whole value of the rent which the defendant or defendants shall prove to have been reserved and to have become due, while such defendant or defendants was or were in possession of such lands, tenements or hereditaments, and to be then unpaid.

Bills in chancery to be filed for compelling a discovery of rent.

XXIX. *And be it further enacted by the authority aforesaid,* That it shall be lawful for the said commissioner or commissioners of forfeitures, in their discretion, to file bills in chancery, in their own name or names, against any person or persons, to compel a discovery of such rent; that whenever it shall appear to the commissioner or commissioners of forfeitures, that any lands, tenements or hereditaments, the arrearages of rents on which shall be due to the people of this state, have been subject to the incursions and depredations of the enemy in the late war, and the possessors thereof have thereby been prevented from enjoying the profits of such lands, tenements or hereditaments, and any dispute shall arise between the said commissioner or commissioners and the possessors of such lands, tenements or hereditaments, respecting the abatement which ought to be made in consequence of the premises aforesaid, it shall and may be lawful for the said commissioner or commissioners to refer such dispute to be determined by arbitrators. And the said commissioner or commissioners shall pay all such rents by them received into the treasury of this state

Abatement when and how to be made on arrearages of rent.

XXX. And whereas in many instances persons have possessed themselves of lands, tenements and hereditaments, forfeited to the people of this state, to the great injury of the public: *Be it further enacted by the authority aforesaid,* That where any person or persons shall have become possessed of lands, tenements and hereditaments, forfeited to the people of this state, by the attainder and conviction of any person or persons whomsoever, it shall be lawful for the said commissioner or commissioners of forfeitures to be appointed by virtue of this act, for the district where such lands, tenements and hereditaments do lie, in his or their own name or names, to proceed against the person or persons so in possession as first above-mentioned, upon the statutes of forcible entry and detainer; and if it shall appear in evidence to the inquest, that the said lands, tenements or hereditaments, on the ninth day of July, in the year one thousand seven hundred and seventy-six, or at any time since, were possessed by the person or persons, by the attainder or

conviction of whom the said lands were deemed to become forfeited, or by the tenant of such person or persons, who claims by demise from the person or persons so attainted or convicted, made after his, her or their attainder or conviction; and if possessed by a tenant or tenants in virtue of a demise before such attainder or conviction, that the term of such tenant is expired; and if the defendant or defendants shall not thereupon prove, to the satisfaction of the inquest, that the person or persons so attainted or convicted did, since the said 9th day of July, 1776, and before the time to which the attainder or conviction of the said person or persons shall relate, convey the said lands, tenements and hereditaments, to the said defendant or defendants or to the person or persons under whom he, she or they doth or do claim, that the inquest shall thereupon find the forcible entry and detainer against such defendant or defendants, and the seisin in fee of such commissioner or commissioners of forfeitures as aforesaid, as on the day of such attainder or conviction as aforesaid; and if such inquisition shall be traversed, and such matters as last aforesaid shall appear in evidence, on the part of the people of this state, the jury shall find a verdict against the defendant. That where any person or persons shall so have entered upon lands, tenements or hereditaments, as aforesaid, and shall not deliver possession of the lands, tenements or hereditaments, so by him, her or them possessed, when thereunto required by the said commissioner or commissioners of forfeitures, or any or either of them, and proceedings thereupon be had against such person or persons, upon the statutes of forcible entry and detainer; and if the said commissioner or commissioners of forfeitures shall, in consequence of such proceedings, obtain possession of such lands, tenements and hereditaments, the said commissioner or commissioners of forfeitures shall recover the costs and expence of such proceedings, before any justice of the peace within this state, the jurisdiction of which justice is hereby extended to such suits, notwithstanding the sum in demand may exceed the value of the sum to which the jurisdiction of a justice of the peace may be limited by any law of this state; and that in case the said commissioner or commissioners of forfeitures shall think proper to sell and dispose of any forfeited lands, tenements or hereditaments, so possessed as last mentioned, the purchaser or purchasers thereof shall, and are hereby entitled to have the same benefit in all things of the statutes of forcible entry and detainer, as the said commissioner or commissioners of forfeitures are herein above entitled to; and no

No writ of certiorari shall lie in any of the cases aforesaid, until after a trial of the traverse, and the writ of certiorari shall not delay the writ of restitution.

Suits against purchasers of forfeited estates, how to be defended by attorney-general.

XXXI. *And be it further enacted by the authority aforesaid, That in all cases where suits shall be commenced against purchasers under the commissioners of forfeitures as aforesaid, by any person or persons claiming the estate so sold, by title opposed to the title derived under either of the said commissioners of forfeitures, all such suits shall be defended at the expence of this state; and by the attorney-general of this state, in behalf of the people of this state; that it shall be lawful for the said attorney-general, by warrant from the person administering the government of the state for the time being, to draw from the treasury of this state, such sum and sums of money, as the person administering the government shall deem necessary to be expended in and about the defence of such suits; that the attorney-general*

shall, once in every six months, account with the auditor of this state for the expenditure of such monies: and that the attorney-general shall, upon a warrant from the person administering the government for the time being, employ such council to assist in and about the defence of such suits, as the said person administering the government shall, from time to time, deem necessary.

XXXII. And in order the better to answer the good purposes of this law; *Be it further enacted by the authority aforesaid*, That the said commissioner or commissioners of forfeitures shall have, and are hereby vested with full power and authority, by summons under his or their hand or hands, and seal or seals, to require any person or persons to appear before him or them, at such time and place in the said respective districts, which he or they shall appoint for the purpose, to give evidence as to such matters and things as the said commissioner or commissioners shall judge necessary for the full and com-

Who, "in case of neglect or refusal to attend and give evidence,

plete execution of their office; and in case of neglect or refusal of such person or persons to attend and give evidence as aforesaid, and produce such papers, deeds and instruments in writing, as may be required by the said commissioner or commissioners, and due proof thereof by any credible witness, to be made before any justice of the peace in the county where the forfeited lands, tenements or hereditaments in question do lie, such person or persons so neglecting or refusing, shall forfeit ten pounds, with costs of suit, to be recovered in a summary way, before such justice, in the name or names of such commissioner or commissioners; and when recovered and received by him or them, the same shall be paid into the treasury of this state. Provided always, That no person or persons shall be obliged to give any verbal or written evidence to such commissioner or commissioners, which may effect his or their own private interest.

Shall forfeit tol. with costs.

But no person obliged to give evidence which may effect his interest.

XXXIII. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for the commissioner or commissioners of forfeitures for each of the said districts, to demand and receive copies or extracts of any records, maps or other papers, from the keeper of any of the public or county records of this state, which he or they shall, on inspection, respectively deem necessary for the due execution of the powers and authorities hereby vested in him or them, to be paid for by the treasurer of this state, out of any public monies which shall from time to time, be in his hands unappropriated, on certificates to be granted for the same by the said commissioners respectively.

XXXIV. And whereas it may so happen, that certain of the forfeited lands tenements and hereditaments may not be conveniently sold or disposed of, until some time be elapsed, and in such cases it may be necessary for the commissioner or commissioners of forfeitures to be appointed by virtue of this act, to demise the same for short terms, reserving reasonable rents to arise therefrom for the benefit of the state; *Be it therefore enacted by the authority aforesaid*, That the said commissioner or commissioners shall be, and are hereby fully authorised and empowered to demise any forfeited lands, tenements or hereditaments, vested in the people of this state, as in the discretion

Commissioners authorised to demise any forfeited lands for one year.

of the said commissioner or commissioners of forfeitures shall appear reasonable, so as that such demise shall not be for any longer term or terms respectively, than one year.

[The 35th, 36th, 37th, 38th and 40th sections of this act, are obsolete.]

XLI. *And be it enacted by the authority aforesaid,* That the said commissioner or commissioners shall, out of any monies which may come in his or their hands for rents, make suitable provision for the support and maintenance of any slave or slaves who may be found unable to support themselves, and who belonged to, and have not been disposed of by any person or persons, whose respective estates have become confiscated or forfeited to the people of this state.

XLII. And whereas no provision hath yet been made for the settlement and discharge of debts justly due from persons convicted and attainted, and whose estates are forfeited to, and directed to be sold for the use of the people of this state, in manner aforesaid; for remedy whereof, *Be it further enacted*

How debts due from persons whose estates are forfeited, are to be ascertained and paid. *by the authority aforesaid,* That it shall and may be lawful to and for the court of chancery and the supreme court of this state, and the mayor's court, and court of common pleas in each respective city and county wherein any of the said forfeited lands, tenements and hereditaments shall be situated, or any one of the judges of the said supreme courts, or any two of the judges of any other of the said courts respectively, in the vacation, on the petition of any person who was an inhabitant of any of the said cities or counties on the ninth day of July, one thousand seven hundred and seventy-six, and who hath not been attainted or convicted, or his or their legal representative, to examine and hear, and according to equity and a good conscience, to determine any claim or demand which he, she or they may have, or make against any estate forfeited as aforesaid, for or by reason of any bond, specialty, debt, contract or dealing which subsisted between such petitioner, and the person by whose conviction or attainder the said estate become forfeited, prior to the said ninth day of July, one thousand seven hundred and seventy-six; and in cases where accounts may be intricate, or may require great examinations, it shall and may be lawful, to and for such courts, or judge or judges respectively, to refer the same to be examined and adjusted by one or more auditors, according to the importance of the case, at their discretion, previously administering to such auditors respectively, an oath, that they will faithfully and impartially perform the said trust, according to the best of their skill and judgment: And every account, claim or demand so to be adjusted by any auditor or auditors, shall be reported to, and unless fraud or error shall be discovered, confirmed by the court, or judge or judges from whom the auditor or auditors derived his or their appointment: and the said court, or judge or judges, as well in cases determined in favour of the petitioner by their own immediate authority as in those which shall be adjusted and reported to them in favour of a petitioner by an auditor or auditors, shall, in due form, certify in writing, the sum which shall so appear, or be found to be due to the petitioner, and shall deliver one copy of such certificate to the petitioner, and cause another copy to be transmitted, as soon as conveniently may be, to the treasurer of the state for the time being; and the said treasurer is hereby directed and required, from time to time, to open accounts for the respective forfeited estates, which shall be found subject and liable for any debt or demand duly adjusted and certified as aforesaid; and to credit such forfeited estates respectively, with all sums of money which shall be paid to him by any commissioner or commissioners of the said respective districts, or shall otherwise arise and come into his hands for the use of the people of this state as or for, or on account of the sales, produce or proceeds of such forfeited estates, whether real or personal; and the treasurer shall charge such forfeited

estates with the several debts and demands, which shall be adjusted and certified to be due and owing therefrom, in manner aforesaid; and it shall be and is hereby declared to be the duty of the commissioner and commissioners of forfeitures of each of the said respective districts, and he and they are respectively enjoined and required, as soon as he or they shall have closed and

† See 11th sess. ch. 90, sec. 7.

† completed the sale of any forfeited estate within his or their district, forthwith, by writing under his or their hands, to certify and make known to the treasurer, that the sale of such forfeited estates, as far as the same hath come to his or their knowledge, is closed and completed, and therewith to render to the said treasurer, upon his or their corporal oath (to be administered by any justice of the peace) a just and true account of such sale, and thereupon the treasurer, by advertisements to be published not less than thrice in two or more of the public news-papers printed in this state, shall notify and require all persons relievable by this act, with whose accounts or demands against such forfeited estate, audited and certified, according to the true intent and meaning hereof, he shall not then be furnished, to exhibit to him their claims or accounts, legally audited and certified as aforesaid, against such forfeited estate, the sale whereof shall then be closed and completed as aforesaid; and all creditors and claimants who shall not comply with the said notice and requisition within the space of four months next after the first publication of such advertisement, shall be, and hereby is and are, to all intents and purposes whatsoever, absolutely debarred, and forever precluded from all relief, benefit and advantage under, or by force and virtue of this act, or any provision, article, matter or thing therein contained.

XLIII. *And be it further enacted by the authority aforesaid.* That when all the debts and claims against any forfeited estates shall be audited and certified, and exhibited to the said treasurer, or be debarred and precluded from the benefits and advantages of this act, in the manner herein prescribed; and

Debts and claims against forfeited estates being audited,

The treasurer to discharge the amount, by giving certificates for the same, with interest at 6 per cent.

such forfeited estate shall be sold and disposed of, and the accounts of the sale and produce thereof be rendered by the respective commissioners to the treasurer, according to the true intent and meaning of this act, it shall and may be lawful to and for the treasurer for the time being and he is hereby authorized and required, to satisfy and discharge the amount of such claims and debts, taking a sufficient voucher for the same, by giving one or more certificate or certificates to such person or persons, his or their legal representatives,

for the sum so to be found due to him or them respectively; which certificates shall bear an interest of six per cent. per annum, and shall be receivable in payment for estates to be sold by virtue of this act, other than such estates, as are by virtue of this act continued under mortgage for the redemption of the bills of credit, commonly called the new emission, and in payment for the waste and unappropriated lands within this state, and in payment of all state taxes hereafter to be levied in this state, at the same rates with gold and silver, although the same may not be mentioned in a future law for the levying of taxes, except in any rate or taxes which by law may be directed to be raised during the present meeting of the legislature; which said certificates are hereby declared to be negotiable.

Which shall be receivable for forfeited and unappropriated lands.

And in payment of taxes.

XLIV. *Provided always and be it further enacted by the authority aforesaid,* That if the produce or proceeds of any such forfeited estates shall be insuffi-

cient to satisfy the whole of the claims and demands, so to be audited and certified, to be due thereon in pursuance of this act, then, and in every such case, it shall and may be lawful to and for the said treasurer, and he is hereby directed and required to distribute the monies which shall have arisen from the said forfeited estate, among all the claimants or creditors whose debts and demands shall be so ascertained and chargeable thereon by this act, in proportion to the sums certified to be due to each of them respectively, by giving such certificates as aforesaid.

XLV. Provided also, and be it further enacted by the authority aforesaid, That the several creditors or claimants who shall become entitled to relief by virtue of this act, shall be chargeable with, and pay reasonable fees to the judges, auditors, witnesses and others, for their services in auditing, adjusting and certifying their respective accounts in the manner in this act directed: *Provided also,* That to entitle any claimant or creditor to the benefit of this act, he shall make \dagger oath before the said treasurer, or one of the judges of the inferior court of the county where such claimant or claimants respectively shall or may reside, who are hereby respectively authorized and directed to administer the same, that he or she hath not received or secured, nor expects to receive or secure any part of the debt or demand which shall be awarded and certified to be due to him or her, in manner aforesaid, by any ways or means whatsoever, the provision made for him or her by this act, only excepted.

Oath to be taken
by creditors or claim-
ants.

\dagger Quakers may affirm,
8th l. ch. 80. l. c. 16.
10th l. ch. 33.

Debtors to persons
whose estates are for-
feited, to pay their
debts in six months
to the treasurer, in
money or certificates.

Further time given,
8th l. ch. 18. sec. 2.
9th l. ch. 58. sec. 3.
10th l. ch. 102. l. c. 7.

Other provision
made, 11th l. ch.
90. l. c. 4.

\dagger 6th l. ch. 1.

After six months, the
commissioners to sue
for such debts.

XLVI. And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for all and every person or persons, being citizens of this state, who is or are indebted by mortgage, bond, specialty, contract or on account, to any person or persons, whose estates, real and personal, is or are, by attainder or conviction, forfeited to the people of this state, within six months after the passing of this act, to pay the said debts, dues and demands, to the treasurer of this state, who is hereby required to receive all such debts, dues and demands, in specie or other monies, and paper securities made receivable in payment upon the sale of forfeited estates by the fifth section of this act; and where such debts were due from any person or persons who have not remained within the enemy's power during the late war, to any person or persons who remained with, or went into the enemy's power or lines, and whose estates have been respectively forfeited to the people of this state, by his or their attainder or conviction respectively; such person or persons being so indebted, may, in discharge of such debts, in addition to the securities above mentioned, pay unto the said treasurer the like certificates or notes, and be discharged from any interest which may have become due on such debts, as is directed by the act, entitled, \dagger An act relative to debts due to persons within the enemy's lines, passed the 12th day of July, 1782, and upon the payment of such debts, dues and demands as aforesaid, the said treasurer shall give his receipt, which receipt shall be a sufficient discharge for so much of the said debts, dues and demands: That from and after the expiration of the said six months, it shall and may be lawful to and for the said commissioner or commissioners of forfeitures, within his or their respective districts, to ask, demand, sue for, and recover, in his or their own name or names, all debts, dues and demands,

which are owing, due and payable to any person or persons whose estate, real and personal, is, or are, by attainder or conviction, forfeited to the people of this state, by virtue of any law or laws heretofore passed, and all and singular the interest money due, and to grow due thereon; and that in all prosecutions to be brought by the said commissioner or commissioners, in virtue of this act, in any court of record, no essoin, protection or wager of law, nor more than one imparlance shall be allowed; and if such suit or suits shall be commenced in any court of equity, then, and in every such case, the defendant or defendants shall be compelled to make full answer to the bill, unless the same be dismissed on demurrer for want of equity, and the monies recovered by the said commissioner or commissioners, in the said several and respective suits, shall, by him or them, from time to time, be paid into the treasury of this state.

XLVII. Whereas Oliver Delancy and Peter Dubois did release and convey certain lands in New-Perth, in Washington county (then called Charlotte county) in fee, to Thomas Clark, subject to the annual rent of one shilling per acre, and the said Thomas Clark conveyed sundry lots and parcels of the said lands to other tenants in fee, subject to the said annual rent; and the right and estate of the said Oliver Delancy, by his attainder, having become veited in the people of this state, the said Thomas Clark hath, by his petition, prayed the legislature to be discharged from his covenants for the payment of the said annual rent, and the other tenants in fee of the said lands

Thomas Clark to account with the commissioners for the moiety of rents received by him, for lands conveyed to him by Oliver Delancy and Peter Dubois.
See 3th sess. ch. 73.

have, by their petition, prayed a remission of their rents in arrear, or some part thereof; *Be it therefore enacted by the authority aforesaid,* That the said commissioner of forfeitures for the Eastern district, shall, and he is hereby authorized to require the said Thomas Clark to account for the moiety of the rents which he hath received for the lands which he held from Oliver Delancy and Peter Dubois, under a yearly rent; and that if the said Thomas Clark inclines to release his right to the said commissioner, to the use of the people of this state, so far as it respects the estate conveyed by the said Oliver Delancy, that the said commissioner do accept of such release.

Collection of the moiety due from the occupants, stayed, 8th sess. ch. 73.

The Commissioners prohibited from selling or demising certain estates.

(a) Given to his widow, 10th sess. ch. 93. sec. 6.

XLVIII. *And be it further enacted by the authority aforesaid,* That the collection of the moiety of the rents still due from the tenants occupying the said lands, be stayed until the legislature shall direct otherwise.

XLIX. *And be it further enacted by the authority aforesaid,* That it shall not be lawful for the said commissioner or commissioners of forfeitures, to be appointed by virtue of this act, to sell or demise the following estates, to wit: The farm or plantation situate in the Eike-Bosh, in the district of Kinderhook, in the county of Albany, forfeited by the conviction of (a) Andries Kettle; the estate late of William Zimmer, in the district of Schohary, in the county aforesaid; the lands in possession of Jacobus Mabie, and Joseph Mabie, in the county of Montgomery; the farm of Charles Heroy, in the county of Dutchess; the farm in possession of Ruth Ferguson, in the district of Hosick, in the county of Albany; the parsonage and glebe near Continental Village, formerly in possession of Ebenener Jones; the estate late of Lucas Vedder, in the said county of Montgomery; the estate late of Henry Herring, of Par

(b) Given to his children, 10th sess. ch. 93. sec. 1.

(c) Ordered to be sold and money paid to trustees for creditors, 11th sess. ch. 95. sec. 26.

(d) Given to his children, 10th sess. ch. 93. sec. 3.

(e) Vested in trustees for his children, 10th sess. ch. 93. sec. 3.

(f) Given to his wife and children, 11th sess. ch. 95. sec. 28.

(g) See 9th sess. ch. 93. sec. 26.

latine district, in the said county; the estate late of (b) Jonathan Fowler, Esquire, in the county of Westchester; the estate late of (c) Bartholomew Crannel, Esquire, lying within the precinct of Poughkeepsie; the estate late of (d) James Lamb, lying within the precinct of Haverstraw; the estate late of John Turner, shopkeeper, in the city of New-York; the estate late of Samuel Striker, of Gravesend, at Long-Island; the estate late of James Hubbard, of Gravesend, in King's county, on Nassau-Island; the estate of (e) Benjamin Close, late of Westchester county; the house and lot of ground in the city of New-York, late the property of (f) Waldron Blauw, now in the possession of Edward Doughty; the (g) parsonage and glebe lands in Philippsborough, in the county of Westchester, or any land heretofore belonging to

Frederic Philipse, in the said county, on which any church or place of public worship is now erected, not reserving more than two acres adjoining to such church or place of worship; the estate late of Gilbert Parry, in Newburgh precinct, in the county of Ulster; the (b) parsonage and glebe lands in John's Town, in the county of Montgomery, or any land heretofore belonging to sir John Johnson, in the said county, on which any church or place of worship is now erected, not reserving more than two acres adjoining to such church or place of worship; or the present highway, or any part thereof extending either way from the present bridge over Speyten-Devil creek, commonly called King's-Bridge, as far as the same passes through, or is laid over any lands belonging to the people of this state; which said bridge and highway, extending from each end thereof, as far as the same is laid over any land belonging to the people of this state, shall be, and hereby is declared to be a public highway, and shall, forever hereafter, be reserved and kept open as a public highway.

L. And be it further enacted by the authority aforesaid, That the commissioners of forfeitures to be appointed by virtue of this act, for the sale of forfeited estates in the southern district of this state, shall receive a commission of one and one fourth per cent. on the amount of the sales to be made by them, as a reward for their services, and in payment of all expences in causing surveys to be made, and of all other charges and disbursements whatsoever in the execution of their office; and that the commissioner or commissioners to be appointed in the other districts of this state, in manner aforesaid, shall each be allowed the sum of twenty-four shillings per day, for every day he or they shall be actually employed in the service required of him or them by virtue of this act, for his or their time and personal expence, and exclusive of all other necessary expences from time to time, to accrue in the execution of the powers and authorities that shall be exercised by him or them in virtue of this law.

LI. And be it further enacted by the authority aforesaid, That the treasurer of this state is hereby required to advance to the commissioners of forfeitures to be appointed by virtue of this act, of the several districts respectively; that is to say, To the commissioner of the Middle district a sum not exceeding twenty pounds; to the commissioners of the Western district, a sum not exceeding one hundred and fifty pounds; and to the commissioner of the Eastern district, a sum not exceeding thirty pounds, to enable them to proceed on the business enjoined on them by this act.

Commissioners to give deeds to vest the purchasers and their heirs with all the estates and interests of the people on the said lands.

Powers of the commissioners for the Western district may be exercised by a majority of them.

All former powers relating to the commissioners, rep. at d.

† 3d Ed. ch. 25.

LII. *And be it further enacted by the authority aforesaid,* That such deeds and conveyances shall be given by the said commissioner or commissioners of forfeitures, for all forfeited lands, tenements and hereditaments to be sold by virtue of this act, as will vest the purchaser or purchasers, his, her or their heirs and assigns, with all and singular the estates, rights and interests held by the people of this state, in, and to such lands, tenements and hereditaments previous to such sale.

Except where locations have been received, and are not carried into execution.

LIII. *And be it further enacted by the authority aforesaid,* That all and singular the powers and authorities hereby vested in the said commissioners of forfeitures for the Western district, shall, to all intents, constructions and purposes in the law whatsoever, be exercised and executed by the said commissioners, or a major part of them.

LIV. *And be it enacted by the authority aforesaid,* That all and singular the powers and authorities granted to any commissioner or commissioners of forfeitures by virtue of a law of this state, entitled, † An act for the forfeiture and sale of the estates of persons who have adhered to the enemies of this state, and for declaring the sovereignty of the people of this state, in respect to all property within the same, passed the 22d day of October, 1779, and all other laws of this state, touching the powers given to the commissioners of forfeitures, passed prior to the first day of January last, shall be, and the same, and every of them, are hereby repealed, annulled and made void; any thing in the said laws, or any, or either of them, contained, to the contrary thereof in any wise notwithstanding.

LV. *Provided nevertheless, and it is hereby enacted and declared by the authority aforesaid,* That in all and every case and cases wherein the Commissioners of forfeitures appointed by virtue of the said laws, or any or either of them, have received any location or locations for the sale of any forfeited lands, tenements or hereditaments, made in conformity to any law or laws of this state, which was or were in force at and immediately before the time of the passing of this act, the said commissioners shall be, and hereby are authorized to carry the sales upon such location and locations, and each and every of them, into full and complete execution, to all intents, constructions and purposes whatsoever in the law, as if this law had not passed; any thing herein contained to the contrary in any wise notwithstanding.

[The 56th and 57th sections of this act are obsolete.]

LVII. And whereas by an act, entitled, † An act to appropriate certain buildings to public uses, passed at this present meeting of the legislature, a certain house and lot of ground situate in the west ward of the city of New York, and vested in the people of this state by attainder of William Axtell, Esquire, late a member of the council of the king of Great Britain, for the late colony of New-York, was set apart for the use of the secretary of this state, and as a deposit for the public records thereof: And by virtue of the said act, the dwelling-house and lot or lots of ground, with the appurtenances in the eastward of the said city, late in the occupation of § Henry White, Esquire, late a member of the said council, and vested in the people of this state by the attainder of the said Henry White, has been set apart for the residence of his excellency the governor: *Be it therefore further enacted by the authority aforesaid,*

† 7th Ed. ch. 12.

§ 1st Ed. ch. 59, sec. 16.

Commissioners not to receive locations on nor sell the buildings appropriated to the use of the governor and secretary.

said, That the commissioners of forfeitures for the southern district of this state, are hereby inhibited from receiving any location on either of the said two dwelling-houses or lots of ground, and from making any sale thereof, or of either of them; but the same are hereby declared to be reserved for the uses aforesaid, until the further order of the legislature.

LAWS of the State of NEW-YORK,

Passed in the Eighth Session of the Legislature, held at the City of New-York.

C H A P. XI.

An ACT instituting a Court for the Trial of Impeachments and the Correction of Errors.

Passed 23d November, 1784.

WHEREAS by the constitution of this state, it is ordained, That a court shall be instituted for the trial of impeachments, and the correction of errors, under the regulations which shall be established by the legislature, and to consist of the president of the senate for the time being, and the senators, chancellor, and judges of the supreme court, or the major part of them.

I. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That the president of the senate for the time being, and the senators, chancellor, and judges of the supreme court, or the major part of them, shall be and hereby are constituted a court for the trial of impeachments and the correction of errors; and it shall and may be lawful, for the same court, at all times hereafter, during the sitting of the legislature, to assemble for the purposes aforesaid, on such days, and at such places as the same court shall, from time to time, appoint.

To be held during the sitting of the legislature.

II. *And be it further enacted by the authority aforesaid,* That the said court hereby instituted, shall be, and hereby is authorised and required, forthwith to cause a seal for the same court to be devised and made, and as soon as conveniently may be, after the same seal is made, shall cause a description thereof in writing, to be delivered to the secretary of this state, who shall record and deposit the same in his office. there to remain as a public record.

III. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the person administering the government of this state for the time being, by and with the advice and consent of the council of appointment, from time to time, to appoint a fit and proper person to be clerk of the same court, who shall hold his office during the pleasure of the said council; and that all writs and process issuing out of the same court, shall be made in the name of, The people of the state of New-York, and tested in the name of the president of the senate for the time being, and signed by the clerk of the same court.

Form of process &c. issuing out of it.

Manner of proceeding upon impeachments.

IV. *And be it further enacted by the authority aforesaid,* That all impeachments shall be delivered to the president of the senate for the time being, who shall thereupon immediately cause the court hereby instituted for the trial of impeachments, to be summoned; and the same court shall thereupon forthwith cause the person so impeached, to appear, or be brought before them, to answer the charge exhibited against him; and upon the appearance of such person so impeached, he shall be entitled to have a copy of the said impeachment, and a reasonable time to plead or answer to the same. And when issue shall be joined upon such impeachment, the court shall appoint a time and place for the trial thereof; and at the time and place so appointed, and before they proceed upon the trial, the president of the senate for the time being, shall administer to each of the members of the said court then present, and the clerk of the said court shall, at the same time, also administer to the president an oath, or if of the people called Quakers, an affirmation, truly and impartially to try and determine the charge in question according to evidence; and the said court shall then proceed to hear, try and determine the same, and may, from time to time, if necessary, adjourn the said trial to any other time or place; and no member of the same court shall set or give his vote upon such trial, until he shall have taken the oath or affirmation aforesaid, before the president of the senate for the time being. Provided always, That no judgment or sentence of conviction shall be given against any person upon any impeachment, unless two-third parts of the members of the said court then present, shall assent to such judgment or sentence. And if two-third parts of the members then present shall not assent to a judgment or sentence of conviction, then, and in such case, the person so impeached shall be considered as acquitted from such impeachment; and no judgment or sentence of conviction upon any such impeachment, shall extend further than to removal from office, and disqualification to hold or enjoy any place of honor, trust or profit, under this state; but the party so convicted or acquitted shall be, nevertheless, liable and subject to indictment, trial, judgment, and punishment, according to the laws of the land.

Power of impeachment vested in the assembly.

V. *And be it further enacted by the authority aforesaid,* That the power of impeaching all officers of the state, for mal and corrupt conduct in their respective offices, be vested in the representatives of the people in assembly; but that it shall always be necessary that two-third parts of the members present shall consent to and agree in such impeachment.

VI. *And be it further enacted by the authority aforesaid,* That when any officer shall be so impeached, as aforesaid, he shall be, and hereby is suspended from exercising his office until his acquittal: And if the president of the senate should, at any time, be impeached as aforesaid, notice thereof shall be immediately given by the assembly to the senate, that another president may be appointed.

Errors in the chancery, supreme court, the court of probates, and the court of admiralty, to be corrected by this court.

VII. *And be it further enacted by the authority aforesaid,* That all errors happening in the court of chancery, the supreme court, the court of probates, and the court of admiralty, except in cases of captures, shall be redressed and corrected by the court hereby instituted; and that it shall and may be lawful, as well for the attorney-general, in behalf of the people of this state, as for any party, plaintiff or demandant, or defendant, tenant or vouchee against whom any judgment hath been, or may hereafter be given

in the same supreme court, or their representatives, who may be thereby aggrieved, to sue forth, out of the court of chancery, a writ of error, to be directed to the judges of the supreme court for the time being, commanding them to cause the record of such judgment, and all things concerning the same, to be brought before the president of the senate, and the senators, and chancellor; which writ of error, if issued during the sitting of the legislature, shall be made returnable at the place where the senate shall then sit, without delay; but if issued during the recess of the legislature, then such writ of error shall be made returnable at the next meeting of the senate, wherefoever the same shall then be; and the party prosecuting such writ of error, shall, without delay, cause a transcript of the said record to be made, and the said judges, to whom such writ of error may be directed, or any one of them, shall, within fifteen days after notice of the said writ of error, if the same be returnable without delay, or if otherwise, at the day of the return thereof, annex the said transcript to the said writ of error, and indorse a proper return upon the same writ, and return the same. And the president of the senate for the time being, and the senators and chancellor, or the major part of them, shall have full power and authority, and hereby are authorised and required, to examine all such errors as shall be assigned or found in such record, or in any process or proceeding concerning the same, and to call upon the judges of the said supreme court, to assign the reasons of such judgment, and thereupon to reverse or affirm the said judgment, and to give such other judgment therein as the law shall require; and shall then cause the said transcript of the record, with their judgment thereon, and all things concerning the same, to be remitted back into the said supreme court, where such further proceedings shall be thereupon, as well for execution as otherwise, as may be agreeable to law and justice.

VIII. *And be it further enacted by the authority aforesaid,* That if at the return of any such writ of error, or at any other time to which the same, or the proceedings thereon, shall be adjourned or continued, there should not be present a sufficient number of the members of the said court of errors, to proceed thereon, the said writ of error, or the proceedings thereon, shall not be thereby abated or discontinued, but the members of the said court of errors then present, shall, in such case, adjourn or continue the same to some further day. Provided always, That no judgment shall be given, nor any rule or order made upon any such writ of error, or process, or proceeding thereon, except for adjourning or continuing the same, unless the president of the senate for the time being, and the senators and chancellor, or the major part of them at the least, be present.

IX. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for all persons who are or may be aggrieved by any sentence, judgment, decree or order of the court of chancery, to appeal from the same, or any part thereof, to the president of the senate for the time being, and the senators and the judges of the supreme court; and the president of the senate and the senators, and the judges of the supreme court for the time being, or the major part of them, shall have full power and authority, and hereby are authorised and required to call upon the chancellor to assign the reasons of such sentence, judgment, decree or order, and to examine, hear, and finally determine such appeal, and all matters concerning the same; and to reverse, affirm, or alter such sentence, judgment, decree or order, and to make such other order or decree thereon, as equity and justice shall require; and there-

Appeals from the
court of chancery.

upon to remit the same, with their judgment, decree and order in the premises, and all things concerning the same, back into the said court of chancery, where such further proceeding shall be thereupon, as well for execution as otherwise, as may be agreeable to equity and justice.

Appeals from decrees of the court of probates and the court of admiralty.

Provided always, That all such appeals, except those from final decrees, be made within fifteen days next after making the orders or decrees so appealed from.

X. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for all persons who are or may be aggrieved by any sentence, judgment, decree or order of the court of probates, or of the court of admiralty (except in cases of captures) to appeal from the same, or any part thereof, to the president of the senate for the time being, and the senators, chancellor and judges of the supreme court; and the president of the senate and the senators, the chancellor and the judges of the supreme court, or the major part of them, shall have full power and authority, and hereby are authorized and required to examine, hear, and finally determine all such appeals, and all matters concerning the same, and to reverse, affirm, or alter such sentence, judgment, decree or order, and to make such other order or decree therein, as equity and justice shall require; and thereupon to remit the same, with their judgment, decree and order in the premises, and all things concerning the same, back into the court so appealed from, where such further proceeding shall be thereupon, as well for execution as otherwise, as may be agreeable to equity and justice. Provided always, That all such appeals from the said court of admiralty, and from the said court of probates, be made within fifteen days next after making or giving the sentence, judgment, decree or order so appealed from. And that all appeals from any sentence, judgment or decree heretofore made by the court of admiralty, or court of probates, shall be made within six weeks after the passing of this act.

XI. *And be it further enacted by the authority aforesaid,* That in all questions arising upon such writs of error and appeals, and the proceedings and judgments thereon, when the other members of the court then present, shall be equally divided in opinion, the president of the senate for the time being, shall have a casting voice in the decision, but shall not vote in any other case whatever.

Writs of error on judgments in the supreme court, and appeals from decrees in chancery, to be brought within five years.

XII. *And be it further enacted by the authority aforesaid,* That all writs of error upon judgments in the supreme court, and appeals from definitive sentences in the court of chancery, heretofore given or made, or hereafter to be given or made, shall be brought within five years next after rendering the judgment or making the decree, and not after.

XIII. *And be it further enacted by the authority aforesaid,* That writs of error in all civil cases, and criminal cases not capital, shall be considered as writs of right, and issue of course; and in all capital cases, writs of error shall be considered as writs of grace, and shall not issue but by order of the chancellor for the time being, made upon motion or petition, notice whereof shall always be given to the attorney-general for the time being, or the prosecutor for the state.

C H A P. XII.

§ 6th sess. ch. 1.
Amended.
10th sess. ch. 94.

An ACT to explain and amend the Act, entitled, *† An Act relative to Debts due to Persons within the Enemy's Lines*, passed 12th July, 1782.

Passed 24th November, 1784.

WHEREAS doubts have arisen, whether the said act doth extend to executors and administrators, both of debtors and creditors, especially the executors and administrators of persons who have deceased since the passing of the said act :

1. *Be it therefore enacted by the People of the State of New-York, represented in Senate, and Assembly, and it is hereby enacted and declared by the authority of the same.*

Act extended to executors and administrators. That the abovesaid act doth extend to the executors and administrators of all such debtors and creditors as fully and absolutely as it would extend to their testators and intestates, were they in full life, and shall be so deemed, construed and taken, to all intents, constructions and purposes whatsoever, both in law and equity.

II. And whereas some of the creditors described in the fourth section of the before, in part, recited act, have withdrawn, or may hereafter withdraw themselves from this state, and thereby put it out of the power of their debtors (to whom the aforesaid act was intended to give relief) to cite them before any court of law in this state, to have a settlement, and make payment agreeable to the mode prescribed in and by the said act : *Be it therefore further enacted by the authority aforesaid,* That it shall and may be lawful to and for such debtor or debtors as aforesaid, by advertisement to be published for eight weeks successively, in two of the public news-papers printed in this state, to notify and require such, his, her or their absent creditor or creditors, to appear at a time and place to be mentioned in such advertisement, before some certain court of law in this state, to have a settlement and payment made as aforesaid (which time shall not be less than eight calendar months from the first publication of such advertisement) and that such notification shall be deemed, taken, and adjudged to be a sufficient citation, to all intents and purposes, and shall have the same validity and effect as if such creditor or creditors had been personally cited : Provided always, That no such advertisement, or any proceeding thereon, shall be deemed, adjudged, or taken to be good or effectual in the law, unless the debtor or debtors shall previously have made an affidavit or affirmation (in cases where by law an affirmation is allowed) before one of the judges of the court of law before which the appearance of such creditor shall be required, that he verily believes that the creditor hath departed the state, or concealed himself therein ; and that it is not in the power of such debtor or debtors personally to serve such creditor with a citation for his appearance ; which departure or concealment shall also be proved to the satisfaction of such judge by two witnesses.

III. *Provided also, and be it further enacted by the authority aforesaid,* That nothing in this act, or the act hereby in part recited, contained, shall affect, injure, or take away, or be deemed or adjudged to extend to the claims, rights and interests of any legatee, or other person legally entitled, in his or her own right, to the personal estate of any testator or intestate, such legatee or legal representative not having remained or come, or by virtue of any law of this state, been sent within the power of the enemy during the late war. Provided also, That no person shall be allowed the benefit of this proviso, unless he shall first have taken the oath of abjuration, and the oath of allegiance to this state, and shall have obtained a certificate, signed by two reputable

Oath of allegiance
sworn of persons
claiming benefit of
act.

and well-affected freeholders of this state, one whereof shall be a judge of the inferior court of common pleas, or mayor's court, of the county or city in which the person named in such certificate shall reside, certifying, that he hath constantly and-uniformly, since the ninth day of July, one thousand seven hundred and seventy-six, been well attached to the freedom and independence of the United States of America, and hath taken an active and decided part therein.

When assignment is deemed fraudulent. IV. *And be it further enacted by the authority aforesaid,* That in all cases where any debt, bill or other obligation, mortgage, security or demand whatsoever, mentioned in the said herein, in part, recited act, shall have been assigned since the time of the passing of the said act, or shall hereafter be assigned to any person or persons whomsoever, by any person who has remained with, gone into, or was sent within the enemy's lines during the said war, every such assignment shall be deemed and adjudged fraudulent, and to have been made with intent to elude the said act; and every such assignee, and his representative, shall be bound to receive payment from the debtor, or his representative, in the same manner as the original obligee, mortgagee or creditor, would have been held to receive the same, had no assignment been made.

Corporation to be affected in cases of assignment only. V. *And be it further enacted by the authority aforesaid,* That nothing in the aforesaid, in part, recited act, or this act, shall be deemed, taken or construed to prejudice or affect any corporation or body politic, except only with respect to assignments herein before mentioned and described.

This act to extend to certain insolvent debtors estates. VI. *And be it further enacted by the authority aforesaid,* That the above mentioned act shall be construed to extend to the assignees or trustees of the estates of such persons who became insolvent debtors before the ninth day of July, 1776. so far as relates to monies due to persons who remained within the British lines in this state.

C H A P. XVII.

An ACT to enable the Clerks of the respective Cities and Counties within this State, to cancel the Records of certain Mortgages, made and executed to Persons whose Estates are forfeited, on Proof that such Mortgages are satisfied.

Passed 27th November, 1784.

WHEREAS it is represented to the legislature, that certain mortgages to persons whose real and personal estates are forfeited to, and vested in the people of this state, are registered in the offices of the clerks of several of the cities and counties within this state, pursuant to an act of the late colony, entitled, An act for preventing frauds by mortgages, which shall be made and executed after the first day of June, in the year one thousand seven hundred and fifty-four, passed the 12th day of December, 1753; and that in many cases the original mortgages remain in the hands or power of the mortgagees: And whereas it is required by the said act, that the certificate thereby prescribed, to enable the respective clerks to discharge the entry of mortgages, shall be signed only by the mortgagee, his, or her executors, administrators or assigns; and by reason thereof, mortgages so as aforesaid, vested in the people of this state, although they should be fully redeemed and paid off, could not be cancelled, but must remain an incumbrance, to the great discouragement of purchasers, and the detriment of the public: For remedy whereof,

Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That where

Persons entitled to the equity of redemption of lands vested in the people, to prove, before a judge, the payment made on the mortgage, &c.

any person or persons entitled to the equity of redemption of lands, tenements or hereditaments, veiled in manner aforesaid, in the people of this state, shall be desirous to redeem and discharge the incumbrances thereon, or who have redeemed and discharged the incumbrances on such

lands, tenements or hereditaments, since the twelfth day of May, one thousand seven hundred and eighty-four, it shall and may be lawful to and for all and every such person or persons, to apply to any one of the judges having authority to take proofs and acknowledgments of the due execution of mortgages, in the city or county wherein the same lands, tenements or hereditaments may be situated, and to produce to such judge the evidence respecting such mortgage, and the payments made thereon. And if the judge, on satisfactory testimony, shall be able to ascertain the balance in arrear on such mortgage, he shall, after due examination, certify under his hand and seal, to the treasurer of this state, and to the clerk of the city or county in whose office the mortgage may be registered, the balance which shall so appear to him to be justly due thereon; and upon producing such certificate to the treasurer, and tender, in the manner which the law directs, of such balance, the treasurer shall, and he is hereby authorized and directed to receive the same, and to sign a certificate of such receipt; which certificate, being acknowledged by him, or proved by the oath of one or more witnesses, in the manner directed by the said act with respect to the certificate of the mortgagee, or his representative, and being filed with the certificate of the judge first mentioned, in the office of the clerk of the city or county where such mortgage shall be registered, it shall and may be lawful to and for the said clerk, and he is hereby required to enter in the book of mortgages, a minute of the said certificates; which minute so entered, shall operate as a full and absolute bar to all and every such mortgage and mortgages, to all intents and purposes whatsoever. Provided, That with respect to such persons who have redeemed or discharged the said incumbrances on such lands, tenements or hereditaments, since the twelfth day of May, one thousand seven hundred and eighty-four, it shall only be necessary for the said persons respectively, to produce the certificate of discharge given by the treasurer on payment, and upon proof of the same in manner aforesaid, it shall be lawful for the said clerks, and they are hereby respectively required to enter in the book of mortgages, a minute of the said certificates respectively, which shall operate as a discharge in like manner as aforesaid.

C H A P. XVIII.

An ACT for the Payment of certain contingent Expenses, and for other Purposes therein mentioned.

Passed 29th November, 1784.

[This act, except the 10th, 26th and 27th sections, is obsolete.]

X. **A**ND *be it further enacted by the authority aforesaid, That it shall and may be lawful for the commissioners of forfeited estates in the western district, to set apart, for the use of a school, the house and lot of ground, in John's-Town, commonly known by the name of the Free-School-House, if not already disposed of, consisting of half an acre of ground; any thing*

in the act for the speedy sale of confiscated and forfeited estates, within this state, and for other purposes therein mentioned, passed 12th May, 1784, to the contrary in any wise notwithstanding.

XXVI. *And be it further enacted by the authority aforesaid,* That the several persons who have been commissioners of sequestration in the several counties in this state, who have not already done it, shall exhibit and file in the office of the auditor of this state, an account, on oath, according to the best of their knowledge, of the personal estate, by them seized or sold, by virtue of any law of this state, and of the monies by them received in consequence of such sales, or of any houses, lands or tenements, by them leased on rent, and pay such monies into the treasury of this state, after deducting such expences and fees as are by law allowed for their services, on or before the first day of June next; and that every such commissioner neglecting or refusing so to do, shall forfeit and pay to the people of this state, the penal sum of five hundred pounds, besides costs, to be recovered in the name of the treasurer of this state, whose duty it is hereby declared to be to prosecute for the same; and the auditor of this state is hereby directed to publish this clause, in one of the news-papers printed in the cities of New-York and Albany respectively, for four weeks successively, within three months from the passing of this act.

XXVII. *Provided nevertheless, and be it further enacted by the authority aforesaid,* That it shall not be lawful for any person or persons, to sue or prosecute the said commissioners of sequestration, or any of them, for any act or acts which they, or any of them, have done, in or about the execution of the trust reposed in them.

LAWS of the State of NEW-YORK,

Passed in the Eighth Session of the Legislature, held at the City of New-York, by Adjournment.

C H A P. XXIV.

An ACT to enable the Trustees of Southampton, in Suffolk County, to fence up certain public Roads therein mentioned.

Passed 26th February, 1785.

WHEREAS the trustees of the freeholders and commonalty of the town of Southampton, in Suffolk county, have petitioned the legislature at their present meeting, that they may be enabled to fence across the public roads running through a large tract of land, known by the name of **Shenicoc Plains**, within the township of Southampton aforesaid, and to fix **swinging gates** at each end of their respective roads running through the said plains, which will prevent the expence and trouble of making and keeping in repair a great length of fence along the main roads running through the said plains;

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That it shall and may be lawful for the trustees of the freeholders and commonalty of the town of Southampton aforesaid, for the time being, from time to time, whenever they shall deem it necessary, to enclose within fence the said tract of land or plains, at such place or places as they shall deem most convenient: Provided always, That the said trustees shall keep and maintain, or cause to be kept and maintained, on every public road running through the land so to be enclosed in fence as aforesaid, one or more good and sufficient swinging gate or gates as may be necessary, as well for the conveniency of the inhabitants of the said town as for travellers.

II. *And be it further enacted by the authority aforesaid,* That whosoever shall at any time cut, break or otherwise injure such fence or fences, when so put up as aforesaid, or stake or otherwise leave open, fasten up or injure any or either of such gates, when put up and provided as aforesaid, shall, for each and every such offence, forfeit and pay a sum not exceeding five pounds, to be recovered with costs, before any justice of the peace of the said county; one moiety of which forfeiture shall be paid to the overseers of the poor in the said town, to be applied to the benefit of the poor in the said town, and the other moiety to the person who shall sue for and recover the same.

C H A P. XXVII.

An ACT for making Process in Courts of Equity effectual against Mortgagers who abscond, and cannot be served therewith, or who refuse to appear.

Passed 7th March, 1785.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That if any suit hereafter to be commenced by a mortgagee in any court of equity, against any mortgagor against whom a subpoena or other process shall issue, such mortgagor shall not cause his, her, or their appearance to be entered upon such process in such a manner as according to the rules of the court the same ought to have been entered in case such process had been duly served; and an affidavit shall be made to the satisfaction of such court, that such mortgagor is withdrawn out of this state, or cannot upon due enquiry be found within the same, so as to be served with such process; that in such case, the court out of which such process issued, may make an order, directing such mortgagor to appear at a certain day therein named; a copy of which shall, within twenty days, be inserted in at least two of the public news-papers printed in this state, for the term of eight weeks; and if such mortgagor do not appear within the time limited by such order, or within such further time as the court shall appoint; then, on proof made of the publication of such order in manner aforesaid, the court being satisfied of the truth thereof, may order the plaintiff's bill to be taken, pro confesso, and thereupon decree a sale of the mortgaged premises, or only part or parts thereof, as to the said court shall seem just and right.

II. *Be it further enacted by the authority aforesaid,* That before any decree shall be made on such bill, the court shall cause the mortgaged premises to be appraised on oath by two indifferent persons to be appointed by the court, that the value of the same may be known to the court, as nearly as may be, before the decree be made; and upon such decree for the sale of

Before a decree the mortgaged premises to be appraised. Altered as to appraisement, 10th sess. ch. 53.

the mortgaged premises, or such part thereof as shall be thought sufficient to discharge the debt due to such mortgagee, together with his costs, a writ shall be issued from such court to the sheriff of the county where such mortgaged premises lie, commanding him to make sale of the lands decreed to be sold at public vendue, and to return the monies arising by the sales into court, at a day to be mentioned in the same writ, not less than three months after the teste, and the day on which such writ issued : And the said sheriff shall thereupon cause an advertisement or notice of the intended sale of such lands, to be inserted in one or more of the public news-papers printed in this state, and continue the same in the said paper or papers weekly for six weeks, before the day to be by him appointed for the sale of the same ; and at the day so by him notified, shall proceed to sell the same to the highest bidder, and shall execute deeds for the same to the purchaser, in such manner as the case may require, and such deeds shall be of the same validity, and as beneficial to the purchaser as if such deed had been executed by the mortgagee and mortgagor, and shall be judged an intire bar against them and each of them, and their and each of their heirs, both in law and equity ; and the monies arising by the sale of the said mortgaged premises, shall be applied to pay off and discharge the debt due to such mortgagee, with such costs as the court shall award, and the remainder, if any be, shall be put at interest, on such security as the said court shall think sufficient, and the same shall be paid to the mortgagor or mortgagors, or his, her or their executors, administrators or assigns, upon his or their application to the court for the same : Provided always, That no greater estate in the premises sold, shall at any time be granted or conveyed by the sheriff to such purchaser, than would have vested in the mortgagee, had the equity of redemption been duly foreclosed.

III. *Provided also, and be it further enacted by the authority aforesaid,* That if the mortgagor or mortgagors shall at any time before the sale made by the sheriff, in pursuance of such writ issued to him as aforesaid, cause his appearance to be duly entered in such court, and shall pay such costs to the mortgagee or mortgagees as the said court shall think reasonable ; that then a supersedeas shall issue from the said court, directed to the sheriff to stay his proceeding to the sale of such mortgaged premises ; and upon such appearance being entered, such proceedings shall and may be thereupon had, as if an appearance had been entered within such time and in such manner, as according to the rules of the court, the same ought to have been entered, in case the first process in the suit had been duly served.

IV. *And be it further enacted by the authority aforesaid,* That in all cases in which as aforesaid a decree for the sale of the mortgaged premises shall be made, and the mortgagee or mortgagees shall be paid the money alledged by him, her or them, to be due as above directed, that it shall and may be lawful for any such mortgagor or mortgagors, within the space of seven years from the time of the sale of such mortgaged premises, if he, she or they find himself, herself or themselves aggrieved, and that the mortgagee or mortgagees hath received more money than was due to him, her or them, on the mortgage, to file his, her or their bill in the said court, against such mortgagee or mortgagees, to compel him, her or them to account with and settle what was really and truly the sum due to such mortgagee or mortgagees, at the time of the sale of the mortgaged premises, and to refund and repay to him, her or them, what shall be found such mortgagee or mortgagees hath been over-paid, together with interest from the time of such payment made, with costs of suit, the former decree for the sale of the mortgaged premises notwithstanding,

V. *And be it further enacted by the authority aforesaid,* That if any mortgagor or mortgagors, by virtue of any writ of habeas corpus, or other process issuing out of any court of equity, shall be brought into court, and shall refuse to cause an appearance to be entered according to the rules of the court, such court shall and may appoint a clerk in court, or attorney of such court, to enter such mortgagor's appearance, and such proceedings may be thereupon had in the cause, as if the party had actually appeared.

VI. *And be it further enacted by the authority aforesaid,* That all and singular the provisions in this act shall be, and hereby are extended to the several and respective commissioners of forfeitures appointed in pursuance of an act entitled, † An act for the speedy sale of the confiscated and forfeited estates within this state, and for other purposes therein mentioned, passed 12th of May, 1784, within the several districts in this state, in all cases where any mortgagee or mortgagees shall have been attainted or convicted, and whose estate, real and personal, by such attainder or conviction has become forfeited to the people of this state, and also to the legal representative and representatives of every mortgagee or mortgagees, and mortgagor or mortgagors.

This act to extend to commissioners of forfeitures and representatives of mortgagees and mortgagors, 17th sess. ch. 64.

C H A P. XXXIII.

An ACT for the Indemnification of the Commissioners of Sequestration, and the Commissioners of Forfeitures, and the Lessees under them, and for other Purposes therein mentioned.

Passed 14th March, 1785.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the late commissioners of sequestration within the several counties of this state, shall be, and they are hereby declared to be indemnified for all and every lease and leases made or given by them, of lands and tenements, the property of persons who, at any time during the late war, had gone over to, remained with, or joined the enemy. And that no suit or suits already brought, shall be maintained, or hereafter commenced against the said commissioners of sequestration, or against any person or persons holding under them, by any person or persons claiming property in or to such lands and tenements: And such indemnification shall also be, and hereby is extended to the commissioners of forfeitures for the several districts of this state, and the lessees under them. Provided always, That nothing herein contained shall be construed to bar or preclude any suit or suits, which may be brought for the recovery of damages sustained by wanton and unnecessary waste and destruction.

II. And whereas certain lands, tenements and hereditaments, forfeited to the people of this state, are so circumstanced that they cannot be speedily sold, and no authority is vested in the commissioners of forfeitures to demise the same after the first day of May next: *Be it therefore enacted by the authority aforesaid,* That the commissioners of forfeitures for the several districts of this state, shall be, and hereby are authorized to demise such lands, tenements and hereditaments, for any term not exceeding one year, after the first day of May next.

Commissioners of forfeitures may lease certain lands for one year.

C H A P. XXXV.

Supplementary act, An ACT to prevent the Exportation of unmerchable Flour, and the false Tareing of Bread and Flour Casks.

Passed 16th March, 1785.

WHEREAS, it is necessary that great care be taken to preserve the reputation of Flour, one of the staple commodities of this state:

I. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,*

Every bolter and baker to have a brand-mark, and to mark every cask of flour or biscuit, bolted or baked, for exportation, before removed from where it was bolted or baked.

That every bolter of flour, and baker of bread, for exportation from this state, shall, each one for himself, provide and have a distinguishable brand-mark, with the initial letter of his christian name, and his surname at full length, and shall therewith brand each and every cask of flour and biscuit of his own bolting or baking for exportation from this state, before the same be removed from the place where the same

shall be so bolted or baked, under the penalty of one shilling for every cask so removed and not branded as aforesaid.

II. *And be it further enacted by the authority aforesaid,* That all wheat flour bolted for exportation as aforesaid, shall, by the bolter thereof, be made merchantable, and of due fineness, and honestly and well packed in good and strong casks well made, and of staves well seasoned, with the tare of the casks marked thereon; and each and every cask thereof shall be well hooped with ten hoops at least, three of which to be on each head, and shall be well and sufficiently nailed before the same shall be removed or carried from the place where the same shall be packed as aforesaid; and every bolter offending in all or any of the premises, shall forfeit and pay, for every such offence, the sum of two shillings. And to prevent flour in casks from being packed too hard, and to render the weighing of every cask unnecessary, there shall be but two sizes, one of which sizes to contain two hundred and twenty-four pounds neat, and the other size one hundred and ninety six pounds neat; and for that purpose the cask shall be made of the following dimensions; that is, Such as is to contain two hundred and twenty-four pounds, the staves shall be of the length of twenty-seven inches, and the diameter of each head eighteen inches; and those that are to contain one hundred and ninety-six pounds neat, to be also of the length of twenty-seven inches, and the diameter of each head sixteen inches and an half, and the casks shall be made nearly straight, for the convenience of stowing in vessels, and on the head of each cask of flour shall be branded with a branding-iron, the neat weight of each barrel.

Any person putting a false brand of the weight or wrong tare on any cask liable to a penalty, and how to be recovered and applied.

III. *And be it further enacted by the authority aforesaid,* That if any person or persons shall put a false brand of the weight on any cask of flour, such person shall forfeit, for every cask so falsely branded, the sum of ten shillings, or shall put a false or wrong tare on any cask of flour or bread to the disadvantage of the purchaser, he, she or they, shall forfeit and pay, for every such cask falsely tared as aforesaid, the sum of five shillings, to the inspector or other person discovering the same, to be recovered before any justice of the peace in the county where the fraud is committed.

No flour to be exported without being inspected.

IV. *And be it further enacted by the authority aforesaid,* That no flour shall be shipped for exportation out of this state, before the same flour shall have been submitted to the view and examination, and been inspected and approved by one of the inspec-

tors to be appointed by virtue of this act, who shall bore the head of each barrel or cask, and pierce the same through with an instrument contrived for that purpose, and examine, try and determine whether the same flour is of due fineness, and whether it has not been injured by being ground too close, or by some other means, so as to prevent its rising properly, and making light bread, and also whether it is honestly packed, and shall then plug up the hole; And if the said inspector shall judge the same flour to be merchantable, and of due fineness, and that the same has not been injured in the manufacturing, or wet, or otherwise damaged, and that the same is honestly and well packed, in such casks, so made, marked and branded as aforesaid, then, and not otherwise, he shall brand every such cask of flour on the quarter, in a fair and distinguishable manner, with the initial letter of his christian name, and his surname at full length, with the name of the county in which it is inspected; for which trouble the said inspector shall receive one penny half penny per cask, and no more; the one half to be paid by the seller, and the other half by the purchaser. And the said inspectors are hereby strictly charged not to brand any cask of flour for exportation, although the flour should be of due fineness, unless it shall appear to them that the same flour has not been injured in the manufacturing, and that it is merchantable, nor unless the same be honestly and well packed in good strong casks, well made, and of staves well seasoned and shopped, and branded in the manner herein before directed, and the tare marked on each cask.

If any flour is found unfit for exportation, the inspector to be paid by the owner.

V. *And be it further enacted by the authority aforesaid,* That if any flour, upon inspection, is judged by the officer inspecting the same, to be unfit for exportation, the owner or possessor thereof shall pay the inspector one penny half penny per cask, for every cask so rejected.

VI. *And be it further enacted by the authority aforesaid,* That no flour whatsoever, not branded as aforesaid, by one of the said inspectors, as and for good and merchantable flour, shall be shipped for exportation out of the state, under the penalty of forfeiture and loss of the full value of all such flour so shipped; one half part thereof to be paid to the treasurer of this state, for the use of the people thereof, and the other half thereof to such person as shall inform and sue for the same, in any court of record in this state, by action of debt, or on the case.

Penalty for exporting flour not inspected.

VII. *And be it further enacted by the authority aforesaid,* That if any person shall export out of this state, any flour not inspected or branded by one of the said inspectors, such exporter, and the master of such vessel carrying such uninspected or unbranded flour out of this state, shall, upon conviction of such offence, in any court of record in this state, severally forfeit the sum of forty shillings for every such cask so exported or carried out of this state, to be recovered and applied in the manner directed in the preceeding clause of this act.

Inspectors may enter on board any vessel, to search for flour suspected to be so shipped.

VIII. *And be it further enacted by the authority aforesaid,* That the said inspectors, and every of them, shall have full power and authority by virtue of this act, and without any further or other warrant, to enter on board any vessel whatsoever, in the harbours of the city of New-York, Albany, or in any of the counties within this state, to search for and make discovery of any flour shipped or shipping on board any such vessel for exportation immediately from thence out of this state. And if the said inspectors, or either of them, shall, on such search, discover any cask or casks of flour not branded as

before directed, the person or persons so shipping the same, shall forfeit all and every such cask and casks of flour so shipped or shipping, and not branded in the manner before directed. And the master or commander of such vessel, who shall receive any such cask or casks of flour not branded as aforesaid, shall forfeit and pay, for each cask so received on board his vessel, the sum of ten shillings: And if any person shall obstruct or hinder the said inspectors, or either of them, in making such search as aforesaid, every person so offending, shall forfeit and pay the sum of fifty pounds.

IX. *And be it further enacted by the authority aforesaid,* That all flour purchased for exportation, shall be inspected in the manner aforesaid, at or after the time the same shall be so purchased for exportation; and if any purchaser of flour for exportation, shall not have the same inspected as aforesaid, at or after the time of such purchase, such purchaser shall forfeit and pay for every such cask of flour, the sum of ten shillings, although the said flour may have been inspected and branded at any time before the said purchase.

X. *And be it further enacted by the authority aforesaid,* That if any dispute shall arise between the owner or possessor of any flour offered to be inspected, and the inspector or inspectors, concerning the place where such flour offered for inspection was manufactured, the owner or possessor thereof shall prove, by himself, or one credible witness, upon oath, or if of the people called Quakers, affirmation, before any justice of the peace, to the best of his knowledge and belief, where such flour was manufactured.

XI. *And be it further enacted by the authority aforesaid,* That no inspector of flour shall brand or mark as inspected, or cause to be branded or marked, any cask of flour wherever manufactured, unless the initial letter of the christian name, and the surname at full length, of the manufacturer, be first branded thereon.

XII. *And be it further enacted by the authority aforesaid,* That his excellency the governor, by and with the advice and consent of the council of appointment, shall, from time to time, appoint one inspector of flour in the respective cities of New-York and Albany, and as many inspectors of flour in each county within this state, as to the said council shall appear necessary: And that it shall be lawful for the respective inspectors for the said cities of New-York and Albany, by writing under their hands and seals, to appoint as many deputies as they shall think necessary to assist them in the execution of their offices, and to displace them at their pleasure; for whose faithful conduct they shall be responsible; and all acts of such deputies shall be performed in the name of their respective principals.

XIII. *And be it further enacted by the authority aforesaid,* That the inspectors to be appointed in pursuance of this act, before they enter upon the execution of their respective offices, shall take the following oath, or if of the people called Quakers, affirmation, before one of the judges of the inferior court of common pleas; but if in the city or county of New-York, before the mayor or recorder of the said city.

I A. B. do swear, or if of the people called Quakers, affirm, That I will faithfully, truly, and impartially, according to the best of my judgment, skill and understanding, execute, do and perform the office and duty of an inspector and examiner of flour, according to the true intent and meaning of the laws of this state relative to the same. So help me God.

Proprietors of flour may ship the same directly from the place where inspected.

XIV. *And be it further enacted by the authority aforesaid,* That the proprietor or proprietors of any flour inspected in the city and county of Albany, or in any of the counties within this state, as by this act directed, shall and may ship

the same directly out of this state, from the plate where the same was inspected, without being obliged to have the same re-inspected.

XV. *And be it further enacted by the authority aforesaid,* That the inspectors to be appointed in pursuance of this act, shall each of them provide himself with a brand-mark, in addition to those they are already by this act required to have, to brand the word, Superfine, and they and each of them are hereby required and directed to brand the word superfine on all such casks as they shall have inspected, and which they shall judge to be superfine flour, and no other. And each of the said inspectors shall, if they find any cask of flour marked by the proprietor or manufacturer with the word superfine, and which upon inspection they shall find not to be superfine, erase or cut out said mark.

XVI. *And be it further enacted by the authority aforesaid,* That no inspector of flour shall purchase any flour by them respectively condemned, nor any flour whatsoever, other than for their own particular and private use, under the penalty of fifty pounds, to be recovered by action of debt.

XVII. *And be it further enacted by the authority aforesaid,* That if any inspector of flour, not then actually employed in the examination of flour, according to the powers and authorities given by this act, shall, on application to him made to examine and inspect any flour as aforesaid, refuse, neglect or delay to proceed to such examination or inspection, for the space of three hours after such application so made, every inspector so refusing, neglecting or delaying to make such examination and inspection, shall, for each offence, forfeit and pay the sum of twenty shillings, to the use of the person or persons so delayed.

XVIII. *And be it further enacted by the authority aforesaid,* That if any person or persons shall counterfeit or alter any of the aforesaid brand-marks, whether state or private, he, she or they, shall forfeit and pay for every offence, the sum of one hundred pounds.

XIX. *And be it further enacted by the authority aforesaid,* That if any person or persons shall empty any casks of flour inspected and branded as aforesaid, in order to put in other flour for sale or exportation, into any cask so branded as aforesaid, without cutting out the said brand marks, every person so offending shall forfeit and pay the sum of fifty pounds.

XX. *And be it further enacted by the authority aforesaid,* That the inspectors to be appointed in pursuance of this act, and every of them, are hereby authorised and directed to sue for all fines and forfeitures mentioned in this act, except such as are herein otherwise directed to be recovered and applied; which fines and forfeitures shall, and may be sued for and recovered together with costs, in any court of record in this state, having cognizance of the same, by action of debt or on the case; the one half of which said fines and forfeitures, when recovered, shall be paid to the treasurer of this state, for the use of the people thereof, and the other half thereof shall be to the use of the inspector or inspectors that shall sue for and recover the same.

XXI. *And be it further enacted by the authority aforesaid,* That this act shall not be in force until the rising of the legislature at the present meeting, and with respect to the size of cask, shall not be in force until the first day of October next.

C H A P. XXXVIII.

2 7th sess. ch. 52. *An ACT to amend an Act, entitled, † An Act for the better laying out, regulating and keeping in Repair, all common and public Highways and private Roads, in the Counties of Ulster, Orange, Dutchess, Washington, Westchester, Albany and Montgomery, passed the 4th day of May, 1784; and to extend the same to the County of Suffolk.*

Passed 16th March, 1785.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the thirty-third section of the act, entitled, An act for the better laying out, regulating and keeping in repair, all common and public highways and private roads, in the counties of Ulster, Orange, Dutchess, Washington, Westchester, Albany and Montgomery, passed the 4th day of May, 1784, be, and the same is hereby repealed.

[The 2d section of this act is repealed, 12th sess. ch. 14th sec. 15, and the third section is become obsolete.]

IV. And whereas there has been an omission of recording in the county records, the laying out of many of the public highways in Dutchess county, by reason whereof, several of the roads which have been used as public highways, have been stopped up, and it is expected that the same will be done to others, to the great damage of the public: For preventing whereof, *Be it enacted by the authority aforesaid*, That all public highways, which have been used as such for the space of twenty years last past, shall be taken, deemed and adjudged in the law, to be public highways, and be subject to be altered and amended, in the same manner as other public highways, by the laws of this state, may be altered and amended.

Explained 13th sess. ch. 22.

V. *And be it further enacted by the authority aforesaid*, That whenever it can be proved by credible witnesses, that a public highway has been laid out within twenty years by the commissioners authorized by law to lay out public highways, and that the same has been since used as a public highway, and that the commissioners who laid out such public highway are dead, the same shall be taken, deemed and adjudged to be a public highway, although it may not have been recorded in the county records.

Explained 13th sess. ch. 22.

VI. *And be it further enacted by the authority aforesaid*, That the persons hereafter to be chosen commissioners to lay out and regulate highways and roads, before they execute any of the powers mentioned in the hereby amended act, shall, instead of the oath prescribed in the twenty-third section of the said act, respectively take the following oath; that is to say.

See 11th sess. ch. 64. sec. 11.

I do solemnly swear (or if of the people called Quakers, affirm) that I will, to the best of my knowledge, faithfully and impartially execute the powers to me given and granted by an act, entitled, An act for the better laying out, regulating and keeping in repair, all common and public highways and private roads, in the counties of Ulster, Orange, Dutchess, Washington, Westchester, Albany and Montgomery. So help me God.

C H A P. XXXIX.

An ACT for the Partition of Lands.

Passed 16th March, 1785.

WHEREAS many tracts of land in this state are held by divers persons as joint-tenants, tenants in common, and coparceners, and such tracts cannot by law be divided by reason of the absence, infancy or coverture of some of the proprietors, to the great detriment of the owners, and the prejudice of agriculture :

I. Be it therefore enacted by the People of the State of New-York, represented in Senate, and Assembly, and it is hereby enacted by the authority of the same,

Proprietors of undivided lands may subscribe and publish a notice.

That any one or more of the proprietors of any tract or tracts, parcel or parcels of land which now are, or hereafter may be undivided, incline to have partition thereof, may subscribe a writing, and publish the same in any one or more

of the public news-papers printed in the city of New-York, and one or more of the public news-papers printed in the city of Albany, except the lands to be divided, lie in the southern great district, in which case such advertisements may be published only in one or more of the news-papers printed in the city of New-York, twelve weeks, directed in general to all persons interested in such tract or parcel of land, specifying the bounds thereof, and giving notice, that three commissioners, not interested in such tract or parcel of land, naming them and their places of abode, are appointed to make such partition, and that they will meet at a certain day and place, to be also therein mentioned, and to be within ten days after the said twelve weeks are expired, to proceed to the partition of the said lands, and requiring all persons interested therein, to attend then and there for that purpose, either by themselves or their attornies; and if no objection to any of the said commissioners be offered in writing to any one of the judges of the supreme court, or of the inferior court of common pleas of the county in which the greatest part of the lands lie, and a notice of such objection in writing served upon the subscriber or subscribers to the notice so directed to be published, or any one of them, and within nine weeks after the first publication thereof, then the commissioners so to be named, shall perform the duties required of them by this act; but if such objection and notice be made and given, the judge to whom it was offered shall appoint the parties a day and place, within ten days after nine weeks from the first publication of the notice are expired, and then and there hear and determine such objections, and appoint other fit and uninterested persons in the room of those he may think proper to remove as unfit; and such persons so appointed shall thenceforth be the commissioners for executing the powers given to commissioners by virtue of this act, and shall, before they proceed to execute their offices, be severally sworn, or if of the people called Quakers, affirmed, before one of the judges of the said supreme court, or before any of the judges of any inferior court of common pleas, to perform the trust and services required of a commissioner by this act, fairly and impartially, according to the direction thereof, and the best of his skill and judgment; and a certificate of their being so sworn or affirmed from the person administering the oath, shall be filed with the rest of the proceedings, as hereafter directed.

II. And be it further enacted by the authority aforesaid,

That the same commissioners so to be appointed, shall afterwards publish a notice or advertisement in one or more of the public news-papers printed in the city of New-York,

Commissioners to give public notice of their appointment in the news papers, and to fix a time for their meeting.

and one or more of the public news-papers printed in the city of Albany, except the lands to be divided lie in the southern great district, in which case such advertisement may be published only in one or more of the news papers printed in the city of New-York, signifying their said appointment, and that at a certain day and place, to be mentioned, they will meet to proceed on the said partition; and that they desire all persons concerned to attend accordingly, which said notice shall be so published six weeks before the day of meeting. And when the commissioners have ascertained who, and how many the patentees of the lands to be divided were, they shall, as soon as conveniently may be, cause a survey to be made of the lands to be divided, in their presence, and having set apart such portion thereof as they conceive to be sufficient to defray the expence of the partition, the residue shall be divided into as many allotments as the commissioners shall judge best, according to the quantity, quality and situation of the land to be divided; after which they shall cause every allotment to be divided into as many lots as there were patentees, as nearly equal as possible, having due regard in the partition to the situation, quantity and quality thereof, so that the patentees, and those holding their several rights, may have equal shares in value, as near as may be. Provided always, That in such case where the patentees of any tract of land have added to the number of original owners thereof, by conveying or disposing of such part or parts of their original undivided shares to any other person or persons, whereby the said person or persons and the said patentees became severally owners of equal undivided shares of such tract of land, then, and in such case, the number of lots shall be equal to the number of such patentees and other owners, so vested with equal shares with such patentees as aforesaid. And in case the bounds or extent of any lands hereafter to be divided by virtue of this act, shall appear to be so much controverted that the true quantity of the whole land to be divided cannot be ascertained clear of dispute, that then, and in such case, the said commissioners shall cause the undisputed lands to be surveyed and run out distinctly and separately from such part as shall be in dispute, and shall make distinct and separate allotments and divisions of the said undisputed and disputed lands, in such manner as that a proportionate share of each, as nearly as may be, as well in quantity as in quality, may, upon the balloting hereafter mentioned, be drawn to the name of each patentee.

III. *And be it further enacted by the authority aforesaid,*

Two true field books
and maps of all sur-
veys, to be made.

That of all surveys and allotments to be made by virtue of this act, two true field books and maps, specifying the bounds of every allotment and lot, shall be made, and the several allotments and lots laid down and numbered on the said maps, and then signed by the said commissioners; one of which said field books and maps shall be filed in the office of the clerk of the county where the greatest part of the lands lay, and the other in the secretary's office of this state; which when done, the said commissioners shall cause an advertisement to be published for at least six weeks in one or more of the news-papers printed in the city of New-York, and one or more of the public news-papers printed in the city of Albany, except the lands to be divided lie in the southern great district, in which case such advertisement may be published only in one or more of the news-papers printed in the city of New-York, notifying the filing of the field books and maps in the office, and appointing a particular time and place, on a day within twenty days after the expiration of the said six weeks, and requiring all persons interested then and there to attend, to see the several lots balloted

for; and that the same may be conducted in a just and impartial manner, one or more of the judges of the supreme court of this state, or of the inferior court of common pleas of the county in which the greater part of the lands lie, not interested in the division, upon the request of the said commissioners, in writing under their hands, served six days before the time of meeting, shall

Amended 14th sess. ch. 7. be present to oversee the balloting so to be made; at which day and place, the said commissioners having then made as many tickets as there are lots in each allotment, with one of the numbers of each lot on every ticket, and as many tickets as there are patentees and proprietors, with the name of one of the patentees or proprietors on each ticket; the tickets of names shall be put into a box, and the numbered tickets into another box, and such person or persons as the commissioners shall then appoint, shall immediately proceed to draw a ticket of the names, and then a ticket of the numbers, and so proceed until all the tickets are drawn. And after drawing for the lots in one of the allotments, they shall proceed in the same manner to draw for the lots in the other allotment or allotments, if more than one, until the whole drawing is completed. And the lot in each allotment on the maps, bearing the number of the ticket drawn next after drawing the ticket with the name of the patentee or proprietor, shall be the separate and divided share of such patentee or proprietor, and of all persons holding under him or her: Of which balloting, and all the proceedings in such partition, the said commissioners shall make a full and fair entry and minute in a book, one copy whereof, certified under their hands, or the hands of a majority of them, and under the hand of the judge present, shall be filed in the said secretary's office, and another, certified in like manner, in the clerk's office of that county where the greatest part of the lands lay; which same books, or an exemplification under the great seal of this state, shall be good evidence of such partition; and which partition shall be valid and effectual in the law, to divide and separate the said lands.

Commissioners to sell the part reserved to defray expenses, and their deeds for the same to be valid. IV. *And be it further enacted by the authority aforesaid,* That the said commissioners, or any two of them, shall, within one year next after drawing or balloting the lots aforesaid, proceed to sell that part of the tract which was set apart to defray the expence of the partition, at public vendue, to the highest bidder, whereof six weeks public notice shall be previously given in one of the said news-papers; and their deed to the purchaser shall pass as good a title to such bidder, for the separate enjoyment of the same, as if all the patentees or proprietors of the said land had made and executed the same in due form of law. Always provided, That no commissioner or commissioners, or any other person in trust for him or them, shall become purchasers of the said land so to be sold, or of any part thereof. And of the whole charge attending such partition, the commissioners shall keep and state a particular account, and lay the same before one or more of the judges of the supreme court, or of the inferior court of common pleas of the county where the greatest part of the lands lie; who are hereby empowered and required to appoint some proper person or persons to audit the same, after fourteen days notice given in writing by the said commissioners, to any three of the proprietors, of the time and place of auditing the said accounts, that they may be heard in objecting to the same; and out of the monies arising by such sale, the commissioners may retain so much as the said auditor or auditors, or the major part of them, shall certify to be due to them for their services and disbursements in completing the said partition; and the

surplus, if any there is, shall be divided into equal parts, according to the number of patentees or proprietors as aforesaid, and be paid to them, or those holding under them; and the receipt of the said patentees or proprietors as aforesaid, or of any person holding under a patentee, shall be a sufficient discharge to the said commissioners for the share of such patentees or proprietors.

V. And whereas joint-tenants, tenants in common, and coparceners of particular lots or parcels of lands so divided, or of other lands held in joint-tenancy, coparcenary, or in common, may be inclined to have partition there-

Particular lots to be divided as other lands.

of: *Be it therefore enacted by the authority aforesaid*, That partition may be made thereof, and be as valid, and the expence of the same defrayed in the same manner as the partition of other lands are before directed; the proprietors in such further or other partition, being considered as the patentees are in the partition above prescribed.

Persons drawing lots on which improvements have been made to pay for such improvements.

Extended to improvements made after passing this act, 14th Feb. ch. 7.

VI. *And be it enacted by the authority aforesaid*, That in case on the partition of any patents or tracts of land, on which improvements have heretofore been made by any owner or proprietor, or by any person or persons, by consent of any owner or owners, proprietor or proprietors of any such patents or tracts of land, the person or persons to whose shares such parcels of improved lands shall fall upon a partition of such patents or tracts of land, shall, before he or they be permitted to the possession of the same, pay the respective possessor or possessors thereof, the value of the improvements made thereon: And in order to settle and ascertain the value of such improvements, the said commissioners are hereby fully authorised, empowered and directed, at the request of the party or parties to whom such parcel or parcels of improved lands, shall, upon such partition as aforesaid, appertain, issue their precepts to the sheriff of the county in which the lands lie, commanding him to summon twelve freeholders, having the proper and legal qualifications of jurors, to attend the said commissioners on the premises, at a day to be appointed in the said precept, not exceeding thirty days after the date thereof, to assess the value of such improvements; at which day and place the said commissioners shall swear the said freeholders, well and truly to inquire into and assess the value of the said improvements, and then shall proceed with their assistance, in a summary manner, to inquire into, and assess the same, and make duplicates of such their inquiries and assessments, under their hands and seals, and the hands and seals of the said freeholders; one of which said duplicates shall be delivered to each of the parties. And in case the possessor or possessors of such improved lands, shall not, within thirty days next after a tender to him or them made of the assessed value, by the person or persons to whom the said improved lands shall, upon such partition as aforesaid, belong, peaceably and quietly deliver up to him or them, the possession of the same, the said commissioners, or any or either of them, shall, upon proof of such tender made before him or them, or any or either of them, by the oath of one or more credible witness, issue a precept in writing, under the hands and seals of them the said commissioners, or the hands and seals, or hand and seal of any or either of them, to the sheriff of the county in which such improved lands respectively lie, commanding him to put the person or persons to whom such improved lands shall, upon such partition, belong, into full and peaceable possession of the same: Provided always, That the costs, charges and expences attending, as well on such assessment, as aforesaid, as on the putting of the party or parties into the possession of such improved lands, shall be esti-

mated according to the regulations herein after prescribed, and shall be paid by the respective possessor or possessors of such improved lands, and on his, her, or their refusal to pay the same, shall be levied on his, her, or their goods and chattels, by warrant under the hands and seals of the said commissioners, or the hand and seal of any one or more of them, directed to the said sheriff of the county wherein such improved lands respectively lie, who is hereby required to perform that service.

VII. And inasmuch as the said commissioners, in such further or other partition, may, through the great number of proprietors and rights, proceed upon a mistake, either by supposing them too few or too many; *Be it therefore enacted by the same authority*, That if any lot or lots shall be set off and drawn for any person having no title to the lands to be divided, such lot or lots shall be considered as lands still undivided; and if no lot or lots shall be set off and drawn for any person having title, nothing herein shall be construed to defeat such title. Provided nevertheless, That the partition shall be considered as fully completed, to all intents and purposes, between all and every the other proprietors of the said lands.

VIII. *And be it further enacted by the authority aforesaid*, That if any of the commissioners so to be appointed to make any partition by virtue of this act, shall die before the same is completed, their powers shall vest in, and be exercised by the survivors or survivor of them.

IX. *And be it further enacted by the authority aforesaid*, That one of the said commissioners shall be sworn as surveyor, previous to the said survey to be performed (or if of the people called Quakers, shall make affirmation) to perform the same truly and impartially, and accordingly execute the duties of surveyor; which said oath, or affirmation, either of the other two commissioners are hereby empowered to administer, and which oath, or affirmation, shall be entered in the minutes of their proceedings and certified by the other two commissioners, and that one other of the said commissioners shall act as a clerk, and as such shall take minutes of all their proceedings.

X. *Provided always, and be it enacted by the authority aforesaid*, That in case the said commissioner, being a surveyor as aforesaid, shall die before the survey be completed, or through sickness, or some other cause, be rendered incapable to complete the same, that in such case, the surviving commissioner or commissioners shall, and may thereupon nominate, appoint, and qualify another surveyor to carry on and complete the same: Or in case either of the said commissioners be a surveyor, he shall and may be qualified and act as surveyor, and complete the survey in like manner: Which said surveyor shall have twenty-eight shillings per day, for his services. That the said commissioner acting as surveyor, shall have twenty-eight shillings per day; the commissioner acting as clerk, twenty-eight shillings per day; and the other of the said commissioners, twenty-four shillings per day, while actually employed in the said service; and each of the chain-bearers, and the flag-bearer and marker (whenever the commissioners shall think such flag-bearer or marker necessary) shall have ten shillings per day; and the persons who audit the accounts, twenty shillings per day, for their services: Which allowances shall be in full for their services and all expences attending the said survey; but the auditors may allow a reasonable sum for defraying the expence of the attendance of the judges, the advertising and balloting herein before directed.

This act not to effect the rights of the state, or of bodies corporate and politic, or the undivided lands of certain towns.

Act extended to New Paltz, 14th sess. ch. 38.

XI. *And be it also enacted by the same authority, That* nothing in this act shall be construed to defeat, prejudice, or destroy the rights of the people of this state, or of any bodies corporate and politic, nor to extend or relate to any of the common and undivided lands of any of the said bodies corporate and politic, nor of any such common and undivided lands belonging to any township on Nassau island, or the township of Schenectady, in the county of Albany, or of Kingston, Hurley, Rochester, New Paltz, and Marble-Town, in the county of Ulster, or the borough of Westchester, any thing herein to the contrary notwithstanding.

XII. *And be it also enacted by the same authority, That* the out-lines of every patent so to be divided, shall be surveyed previous to the division, by the surveyor-general or his deputy, provided that he do attend and perform such service upon six weeks notice of the time and place when and where the commissioners are to meet for performing the survey, being given to him in writing, under the hands of the commissioners; for which service he shall be allowed at the rate of twenty-eight shillings per day, for coming to, attending on, and returning from such survey; and shall be provided with chain-bearers, in the same manner, and to be paid at the same rate as other surveyors, commissioners, and chain-bearers are by this act directed to be paid. But if the surveyor-general shall neglect to attend by himself or his deputy, in the manner aforesaid, then it shall be lawful for the commissioner acting as surveyor, to perform the whole survey of the patent so to be divided.

XIII. And whereas there may arise doubts on the survey, concerning the limits of the tract so to be divided, as well on objections made by those holding under the patents, as by the surveyor-general or his deputy, on the part of the people; *Be it therefore enacted by the same authority, That* the commissioners may, in such case, run the limits in such manner as the said surveyor-general or his deputy, shall direct, and also, in the manner directed by the party or parties first suing out a partition of the lands so to be divided, and attending such survey for the partition thereof; and shall make a separate division of the lands so in dispute, and shall proceed to the complete partition of the same, in the manner before directed, and the lines run for the limits of the bounds of the patent, shall always be laid down on the map on which the division is made, and on those to be filed in the secretary's office, and in the office of the clerk of the county.

XIV. *Provided always, and be it further enacted by the authority aforesaid, That* no survey of the out lines of any patent shall be made by virtue of this act, in any case where such survey has already heretofore been made by virtue of any former law of the legislature of this state, while a colony, or at the instance or request of the patentees or parties interested in the said lands, unless the said commissioners shall conceive such former survey of the out-lines of any patent is not sufficiently certain to proceed to a partition and division as aforesaid.

XV. And whereas many small estates held in common, require a more easy and less expensive mode for the division thereof, than that which is heretofore provided: *Be it therefore enacted by the authority aforesaid, That* where any lands, tenements or hereditaments, shall be held in common, it shall and may be lawful for the court of common pleas in the county where such lands shall be, upon the application of one or more of the owners

proprietors of such lands, tenements and hereditaments, for partition thereof, it being proved to the satisfaction of the court, that the value of the said lands, tenements and hereditaments, do not exceed five thousand pounds, to appoint three reputable freeholders of the county, commissioners for that purpose, affidavit being first made before the court by the person or persons making such application, that the other owners or proprietors residing within the state, or the guardians of such owners or proprietors as are minors, have had thirty days previous notice of his or their intention of making such application; and the commissioners so to be appointed, after they shall have been duly sworn before one of the judges of the court of common pleas in such county, honestly and impartially to execute the trust reposed in them respectively, as commissioners for making partition of the lands, tenements and hereditaments, as directed by the court, shall proceed to make partition of the said lands, tenements and hereditaments, among the owners and proprietors thereof, according to their respective rights therein; which partition being made by the said commissioners, or any two of them, and a return being made thereof in writing, under their hands and seals, to the court, particularly describing the lands allotted to each respective owner or proprietor, and mentioning which of the owners or proprietors are minors, if any such there shall be; which return being acknowledged by the said commissioners, or any two of them, before one of the judges of such court, and accepted by the court, and entered of record in the clerk's office, shall be a partition of such lands, tenements and hereditaments, as are therein mentioned. Provided always, That where any houses and lots are so circumstanced that a division thereof cannot be made without great prejudice to the owners or proprietors of the same, and the commissioners appointed to make partition of the same shall so report to the court, if it shall then appear to the court, that such houses and lots do not exceed in value the sum of three thousand pounds, the court shall thereupon give orders to the said commissioners to sell such house and lot, or houses and lots of land, at public vendue, and shall make and execute good and sufficient conveyances to the purchaser or purchasers thereof, which shall operate as an effectual bar, both in law and equity, against such owners, proprietors, and all persons claiming under them; and the monies arising therefrom to pay to the owners or proprietors of such houses and lots of land, their guardians or legal representatives, as shall be directed in the said order, retaining in their hands, for their services and expences, such sum as shall be allowed by the court; and the said commissioners, on a division of lands, tenements and hereditaments, by order of the court as aforesaid, shall be allowed such sum as the court shall award for their services and expences, to be paid by the owners or proprietors of the lands, tenements and hereditaments so divided, in proportion to their respective rights therein; and in case of the neglect or refusal of any of the owners or proprietors, to pay his, her, or their proportion of the sum so awarded, the court shall order so much of the lands, tenements and hereditaments allotted to such owners or proprietors so refusing or neglecting, to be sold at public vendue, as will be sufficient to pay his or her proportion of the sum awarded by the court, together with the costs of such sale. And provided also, That no division or sale shall be made by order of the court as above directed, contrary to the intention of any testator, as expressed in his last will and testament.

XVI. *And be it further enacted by the authority aforesaid, That it shall and may be lawful for the inferior courts of common pleas in the several coun-*

ties, to allow of guardians who shall be chosen by minors of the age of fourteen years, and to appoint guardians for such as shall be within that age; and the court, on allowing or appointing any guardian as aforesaid, shall take sufficient security of all such guardians for the faithful discharge of their trust, and to render a just and true account of such guardianship to the court, when thereunto required. And the guardians of all minors so to be allowed or appointed as aforesaid, shall be, and hereby are respectively authorised and empowered, on behalf of the respective minors whose guardians they are, to do and perform any act, matter or thing, respecting the division of any lands, tenements and hereditaments, as is directed in the above preceding clause, which shall be binding on such minor, and be deemed as valid to every purpose as if the same had been done by such minor after he should have arrived at full age.

C H A P. XLVI.

An ACT establishing and regulating Ferries across the East River, between the Counties of Queen's and Westchester.

Passed 31st March, 1785.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That it shall and may be lawful for Richard Sands, of Cow-Neck, in Queen's county, his heirs, executors and administrators, to set up, keep and maintain a ferry across the East-river, from such place on the lands of the said Richard Sands, near Sands's-Point, at Cow-Neck aforesaid, as shall be most convenient for the purpose, for and during the term of seven years from the time of the passing of this act.

And be it further enacted by the authority aforesaid, That it shall and may be lawful for the justice or justices of the peace, resident in the several townships of Oyster-Bay, in Queen's county, and New-Rochelle, in Westchester county, and the overseers of the poor of the said respective townships, or a majority of them, to lease, for any term not less than four, nor exceeding seven years, the right and privilege of setting up, keeping and maintaining a ferry from their respective townships, across the East river, to such landing places in the said two counties as are herein after mentioned; that is to say, That the ferry-boat from the township of Oyster-Bay, shall and may land at such dock or landing-place in the township of Rye, in Westchester county as the ferry in the said township of Rye shall and may, by law, be kept; and that Places where the ferry-boat shall land. the ferry-boat from the said township of Rye, shall and may land at such dock or landing-place in the said township of Oyster-Bay, as the ferry in the said township of Oyster-Bay shall, by virtue of this act, be kept; that the ferry-boat which shall be kept by the before-mentioned Richard Sands, his heirs, executors or administrators, shall and may land at such dock or landing-place in the township of New-Rochelle, as the ferry in the said township of New-Rochelle shall, by virtue of this act, be kept; and that the ferry-boat from the said township of New-Rochelle, shall and may land at such dock or landing-place at Cow-Neck aforesaid, as the said Richard Sands, his heirs, executors or administrators, shall erect and keep, as is herein after mentioned. And that it shall and may be lawful for the justice or justices of the peace, resident in the several townships of Oyster-Bay and New-Rochelle, and the overseers of the poor of the said respective townships, or a majority of them, to lease for any term not less than four, nor ex-

ceeding seven years, to such person or persons, and at such yearly rent as they shall deem proper, the right and privilege of setting up, keeping and maintaining a ferry across the East river, to and from the respective townships before mentioned; and the rent to be reserved as aforesaid, shall be applied towards the maintenance and support of the poor of the respective townships aforesaid.

III. *And be it further enacted by the authority aforesaid,* That the said Richard Sands, his heirs, executors and administrators, shall, if he or they shall set up a ferry by virtue of this act, erect a convenient dock or landing-place on such part of the lands of the said Richard Sands, near Sands's-Point, at Cow-Neck aforesaid, as shall be most suitable for the purpose; and shall, by writing under hand and seal, covenant and agree with the overseers of the poor of the township of North-Hampstead, in Queen's county, for the time being, that he the said Richard Sands, his heirs, executors and administrators, shall, and will keep and maintain a good and sufficient ferry, and will not take or receive, nor suffer to be taken or received, any greater price or rate of ferriage than are herein after allowed to be received or taken; and shall also pay to the overseers of the poor of the township of North-Hampstead, for the time being, for the use of the poor of the said township, such annual rents as shall previously be agreed on, by and between the said overseers of the poor for the time being, and the said Richard Sands. And that the justice or justices of the peace, resident in the said several townships of Oyster-Bay and New-Rochelle, and the overseers of the poor of the said respective townships for the time being, or a majority of them, in the leases to be by

Justices in their leases, to covenant with persons keeping ferries, to maintain sufficient ferries, and at certain rates.

them respectively made, shall covenant and agree with the person and persons to whom they shall respectively lease the right and privilege of setting up and keeping a ferry as aforesaid, that such person or persons shall, during the term of his or their said lease, keep, support and maintain, a sufficient ferry-boat; ready at all reasonable times and seasons, to carry and transport the persons and articles following, and at the rates following: That is to say, From the township of Oyster-Bay to the township of Rye, and from the township of Rye to the township of Oyster-Bay, for each man and horse, six shillings; for a foot passenger, if one only, three shillings; if more than one, then each two shillings; for a horse and chair, with travellers, eight shillings; for every head of neat cattle, two shillings; for every sheep, calf, or hog, six-pence; for a sled and two horses, with travellers, ten shillings; for a sled and one horse, with travellers, eight shillings; and so in proportion for other things: And from the ferry, to be kept by the said Richard Sands, his heirs, executors or administrators, to the township of New-Rochelle, and from the township of New-Rochelle to the place at which the ferry shall be kept by the said Richard Sands, his heirs, executors or administrators, for the persons and articles before enumerated, at and after the rate of one-third less than is before affixed as the rates or prices of ferriage for such articles and persons.

IV. *And be it further enacted by the authority aforesaid,* That if the above-mentioned Richard Sands, his heirs, executors or administrators, or any ferry-man, or person employed by him or them, or any other person or persons whatsoever, to whom the right and privilege of setting up and keeping a ferry shall be granted in pursuance of this act, or the ferry-man, or person employed by them respectively, shall take, exact or receive, any greater or higher rates for transporting persons, goods and chattels, or other things whatsoever, than

If any greater rates for services are taken, the offender to forfeit twenty shillings.

are herein before limited and established, he or they, or any of them, so offending, shall forfeit and pay, for every such offence, the sum of twenty shillings, to be recovered in any court within this state, having cognizance thereof, by any person who shall sue for the same. Provided always, That

No person to be excluded by this act, from ferrying in their own boats.

nothing herein before contained, shall be construed to exclude any person or persons, living or inhabiting on the shores of the said East river, within the counties of Queen's and Westchester, from the right of carrying and transporting themselves and their goods and chattels respectively, in their own boats, without paying any rate of ferriage.

V. *And be it further enacted by the authority aforesaid*, That if any person or persons shall set up, keep or maintain a ferry, or shall carry or transport any person, goods or chattels, for hire or pay, across the East river, between the said counties of Queen's and Westchester, other than such person or persons as shall be authorised to set up and keep a ferry in pursuance of this act, and other than such person or persons as shall keep and maintain a ferry across the aforesaid river, by virtue of any patent or charter-right heretofore granted for the purpose, and not since annulled or vacated; such person or persons shall, for every such offence, forfeit and pay the sum of two pounds, to be recovered in any court within this state having cognizance thereof, by any person who shall sue for the same.

VI. *And be it further enacted by the authority aforesaid*, That at the expiration of the term hereby granted to the said Richard Sands, his heirs, executors and administrators, for setting up and keeping a ferry in the manner aforesaid, or if the said Richard Sands, his heirs, executors or administrators, shall sooner decline, neglect or refuse to keep and main such ferry, it shall then be lawful for the justice or justices of the peace, resident in the aforesaid township of North Hampstead, and the overseers of the poor of the said township, or a majority of them, to lease the right and privilege of setting up and keeping a ferry from the said township of North-Hampstead to the township of New-Rochelle, in like manner, and under the same rules and regulations as are herein before prescribed for the townships of Oyster-Bay and New-

Certain ferries not to be affected by this act.

Rochelle. Provided always, That nothing in this act contained, shall be deemed or construed to extend to, or affect any ferry or ferries now kept to the westward of the township of Flushing, in Queen's county, or to the westward of Frog's-Neck, in Westchester county: any thing herein before contained notwithstanding.

C H A P. XLIX.

17th sess. ch. 84.

An ACT to amend an Act, entitled, † An Act for the speedy Sale of the confiscated and forfeited Estates within this State, and for other Purposes therein mentioned, passed the 12th of May, 1784.
Passed 31st March, 1785.

WHEREAS by the seventh section of the above-said act, entitled, *An act for the speedy sale of the confiscated and forfeited estates within this state, and for other purposes therein mentioned*, it is required, that whenever the commissioners of forfeitures shall make sale of any lands, tenements or hereditaments, by public vendue or private sale, the person or persons to whom such sale be made, shall immediately pay unto the said commissioner or commissioners, one-third part of the purchase-money, and the remaining sum due, on or before the first day of June, in the year one thousand seven hundred

dred and eighty-five: And it appears that the aforesaid time of payment may, in many instances, prove too short and inconvenient:

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That in all sales of forfeited estates to be made by the commissioners of forfeitures, to any person or persons whatever, after the passing of this act, such person or persons so purchasing, shall immediately pay to the said commissioner or commissioners, one-third part of the purchase money, and the remaining sum due, within nine months from the time of such sale.*

On future sales of confiscated property, one third of the purchase-money to be paid down, and the remainder in nine months.

Altered, 9th Dec. 18. §8. sec. 13.

[The second section of this act is obsolete.]

III. And for the better securing the payment, in all cases, of the residue of the said purchase-money: *Be it therefore further enacted by the authority aforesaid, That on the delivery of the conveyance by the commissioners, the grantees shall respectively execute a bond, in the usual form, to the commissioners, in their own name, for the payment of the said residue of the said purchase-money, and the commissioners shall endorse on such bond, a description of the lands in payment for which the said bond shall have been taken; and which bond shall contain a warrant of attorney, in the usual form, to confess a judgment thereon. And if default shall be made in the payment of the principal sum specified in the condition of such bond, with the interest thereof, in cases where such principal sum shall be deemed to bear an interest, as herein before mentioned, it shall be the duty of the commissioners to cause a judgment to be entered up on such bonds, in the inferior court of common pleas of the county where the lands in payment for which such bond shall have been given, shall lie; and to proceed to execution on such judgment, and always in the first instance by fieri facias: And all conveyances or mortgages, made or executed by the said obligors respectively, of the said lands conveyed to them, and all judgments against the said obligors, after the conveyance to them from the commissioners, and before the whole of the monies made payable by the said bonds respectively, shall be paid and satisfied, as far forth as such conveyances, mortgages or judgments may tend to delay or defeat the payment of the said monies, shall be deemed, and hereby are declared to be fraudulent and void.*

C H A P. LII.

An ACT to grant to Isaac Van Wyck, and others, an exclusive Right of keeping Stage-Waggons on the East Side of Hudson's-River, between the Cities of New-York and Albany, for the Term of Ten Years.

Passed 4th April, 1785.

WHEREAS Isaac Van Wyck, Talmage Hall and John Kinney, have, by their petition, prayed, that on account of the great expence and labour attending the undertaking, an exclusive right of carrying on a stage from the cities of New-York and Albany might be granted to them for the term of ten years: And whereas the erecting a stage as aforesaid will tend to promote the ease and benefit of the people of this state:

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the said Isaac Van Wyck, Talmage Hall and John Kinney, and their respective executors, administrators and assigns, shall have, hold, possess and enjoy, and*

are hereby given, granted and allowed, the sole and exclusive right, liberty and permission, for the term of ten years, the same to commence on the first day of June next, to erect, set up, carry on and drive, at all time and times hereafter, during the term aforesaid, all and every such stage-waggon or waggons, from the said cities of New-York and Albany respectively, to the other, on the east side of Hudson's River, as they may judge sufficient for the purpose of accommodating such a number of passengers as may, from time to time apply: And that it shall not be lawful for, nor shall any other person or persons, upon any pretence whatever, presume, during the time aforesaid, to erect, set up carry on or drive any stage-waggon or waggons, or any other carriage or carriages for the like purpose, from the said cities respectively, under the penalty of two hundred pounds, to be recovered by any person or persons who shall prosecute for the same, together with costs, in any court of record having cognizance of the same.

II. *And be it further enacted by the authority aforesaid,* That the said Isaac Van Wyck, Talmage Hall and John Kinney, their executors, administrators and assigns, shall furnish and provide at least two good and sufficient covered stage-waggons, to be drawn each by four able horses, for the purposes aforesaid; and that the price for each and every passenger therein, shall not exceed four pence per mile, including the liberty of carrying fourteen pounds weight of baggage; that for every one hundred and fifty pounds weight of baggage, a like sum of four pence per mile shall be paid for the same; and so in like proportion for every greater or less quantity. And that such stage-waggon or waggons shall proceed at least once in every week, during the said term of ten years, on the passage or journey aforesaid, from the respective cities aforesaid, unless the same are prevented by the badness of the roads, or some uncommon accident. Provided always, That in case the said Isaac Van Wyck, Talmage Hall and John Kinney, their executors, administrators or assigns, shall neglect or refuse to do and perform the duties aforesaid, according to the true intent and meaning of this act, that in such case this act shall cease, and be null and void.

C H A P. LIV.

An ACT to restrain Hawkers and Pedlars.

Passed 4th April, 1785.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That from and after the first day of July next, no person or persons shall or may use or exercise the profession or calling of a hawker and pedlar in this state, under the penalty of five pounds for each offence, to be recovered, with costs, in any court having cognizance to try the same; the one half of which said penalty shall go to the person or persons who shall sue and prosecute for the same, and the other half to the poor of the town, manor, district or precinct where the offence shall be committed. Provided always, That this act shall not be construed to debar any person or persons from carrying, conveying, or selling any goods, wares or merchandize, of the growth, produce or manufacture of this state, or of any other of the United States of America; and that all suits to be brought for any offence against the true intent and meaning of this act, shall be brought within thirty days after the offence shall be committed.

C H A P. LVII.

An ACT for granting certain Privileges to the Township of Plattsburgh.

Passed 4th April, 1785.

I. **B**E it enacted by the People of the State of New York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the several tracts of patented lands, lying on the west side of Lake Champlain, at a place called Cumberland Bay, and Cumberland Head, in Washington County, bounded north by Beekman's patent, west by unpatented lands, south by unpatented lands, and a tract of land granted to Peter Stuart, and east by Lake Champlain, be, and the same are hereby made one township, by the name of Plattsburgh.

II. And be it enacted by the authority aforesaid, That the freeholders and inhabitants of the said town of Plattsburgh, shall be, and hereby are vested with power to choose annually a supervisor, assessors, town-clerk, collector, commissioners for laying out high-ways, overseers for keeping in repair high-ways, overseers of the poor, fence viewers, and pound-master. And the freeholders and inhabitants of the said township shall meet together on the third Tuesday in June next, at the house of Charles Platt, in the said township, and then and there, by plurality of voices, elect the town-officers above-named, to continue in office until the first Tuesday in April then next following, at which day a new election for town-officers shall take place. and the election thereafter for town-officers shall be held annually in the said township, on the first Tuesday in April, at the place above named, until such time as a majority of the freeholders and inhabitants thereof, at any such meeting, shall agree upon some other place of meeting for the following year; and then such place, so to be agreed upon shall be the place of annual meeting for the purposes aforesaid, until the same shall be altered in manner as aforesaid.

III. And be it enacted by the authority aforesaid, That it shall and may be lawful for Zephaniah Platt, Esq. and his associates, to take as much ore out of the iron ore bed on the west side of Lake Champlain, near Crown-Point, and reserved to the people of this state, as they shall have occasion to manufacture in the said township, for a term not exceeding ten years, on such conditions as the commissioners appointed by the act, entitled 7th sess. ch. 63. An act for granting certain lands promised to be given as bounty lands by the laws of this state, and for other purposes herein mentioned, passed the 11th of May, 1784, shall deem expedient.

C H A P. LIX.

An ACT for giving Relief to Lessees deprived of the Benefit of their Leases during the late War.

Passed 4th April, 1785.

WHEREAS, divers persons who have held leases for terms of years, were, by reason of the invasion of the late enemy, compelled to abandon the possession before the terms of such leases were expired, whereby they were deprived of the use or profits of the houses, lands or tenements so leased, and are liable to pay the rents or penalties reserved or incurred thereon, and some such persons have been prosecuted and put to expence by reason thereof; Therefore,

I. *Be it enacted by the People of the State of New-York, represented in senate and Assembly, and it is hereby enacted by the authority of the same,* That all and every person and persons, having taken a lease or leases for houses, lands or tenements, before the fifteenth day of September, one thousand seven hundred and seventy-six, and having been necessitated to abandon the same, by reason of the invasion of the fleets or armies of the king of Great Britain, or his allies, and having not at any time since voluntarily put him, her or themselves under the protection of the said fleets or armies, until a cessation of hostilities between the United States of America, and the said king of Great-Britain and his subjects, shall be exonerated, released and discharged from the payment of such rents or arrearages of rent, or penalties reserved, made payable or incurred by such leases, while he, she or they were out of the possession, and did not enjoy the benefit thereof.

In all suits against such persons this act may be given in evidence.

II. *And be it further enacted by the authority aforesaid,* That in all or every suit or suits which have been, or shall be commenced and prosecuted on such lease or leases, for rent or arrearages thereof, or penalties which have arisen, accrued or been incurred on the same, while he, she or they were out of the possession, and did not enjoy the use or benefit thereof, by reason aforesaid, all and every such person and persons, lessees as aforesaid, who now are or hereafter shall be prosecuted on any of the said leases, may give this act and the special matter in evidence, in his, her or their defence.

III. *And be it further enacted by the authority aforesaid,* That wheresoever a judgment has already been obtained on any such lease as aforesaid, no execution shall issue until the plaintiff or plaintiffs in such suit or action, shall previously have issued a scire facias against the defendant or defendants, in such suit or action, to shew cause why he or they should not pay the debt or damages recovered in such suit or action; and on which scire facias the defendant may give this act and the special matter aforesaid, in evidence, in manner and form mentioned in the preceding clause.

Lessors to have remedy against occupiers.

IV. *And be it enacted by the authority aforesaid,* That the lessors, and their legal representative or representatives respectively, shall have the like remedy against the occupiers, their heirs, executors or administrators respectively, of the lands and tenements so by them leased, to the said lessees, the objects of this law, as the respective lessee would have had during the continuance of such leases respectively.

C H A P. LXI.

An ACT to appoint the place of holding the Supreme Court of Judicature of this State, in future, and to prolong the Terms thereof, and for other Purposes therein mentioned.

Passed 7th April, 1785.

WHEREAS by the laws of this state it is ordained, That the supreme court of judicature shall begin, sit, and be held at the city of New-York, at the four several times following, to wit. On the third Tuesdays of January, April and October, and on the last Tuesday of July, in every year; and that the said several terms or sittings of the said court should be held and continued as follows, to wit, The terms of October and April, from the times of their commencement aforesaid, every day (except Sunday) until the end of Saturday in the next ensuing week. And whereas by law

the person administering the government of this state for the time being, is empowered to appoint the place for holding the said supreme court, in pursuance of which law, the governor did, by proclamation, appoint the city of Albany to be the place for holding the said court: And whereas for the more equal distribution of justice to the citizens of this state, it is now become necessary that two of the said terms or sittings should be in future at the said city of Albany, and two of them at the city of New-York: And whereas the continuance of the said terms or sittings, during the short spaces of time aforesaid, is attended with great delay of justice; Therefore,

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That for the future the said supreme court shall begin, sit, and be held at the city of Albany, at the two several times following, to wit, On the last Tuesday of July, and the third Tuesday in October, in every year; and at the city of New-York, the two several times following, to wit, On the third Tuesday of January and April, in every year.

II. *And be it further enacted by the authority aforesaid,* That the said several terms, or sittings of the said court, shall, in future, be held and continued during the spaces of time following, to wit; The terms of October and April, from the times of their commencement aforesaid, every day (except Sunday) until the end of the Saturday in the third week next ensuing; and the terms of January and July, from the times of their commencement aforesaid, every day (except Sunday) until the end of Saturday in the next ensuing week. Provided, That whenever the business of the court shall be completed, the court may adjourn until the next term, without sitting, until the end of the term.

III. *And be it further enacted by the authority aforesaid,* That the next supreme court of Judicature, to be held on the third Tuesday of April next, shall be held at the city-hall of the city of Albany; any thing in this act to the contrary thereof notwithstanding.

IV. *And be it further enacted by the authority aforesaid,* That each and every day of the said terms or sittings (except Sunday) shall be a return day.

V. *And be it further enacted by the authority aforesaid,* That the office of the clerk of the said supreme court, shall be kept and held in the city of New-York: and that the said clerk shall appoint a deputy clerk of the said court, which said deputy shall keep and hold an office in the city of Albany, wherein writs, process, pleadings, papers and records, of the said court, shall and may be filed. Provided nevertheless, The said writs, process, pleadings, papers and records, which shall be filed in the office of the said deputy as aforesaid, shall, once in every six months, be removed from the office of the said deputy, and lodged in the office of the clerk of the said supreme court, in the city of New-York aforesaid.

C H A P. LXXII.

An ACT authorising the Freeholders and Inhabitants of the Township of Westchester, to choose Trustees for the Purposes therein mentioned.

Passed 18th April, 1785.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That it shall and may be lawful for the freeholders and inhabitants of the township of Westchester, in the county of Westchester, to assemble at the usual place of holding town-meetings, on the first Tuesday in May next, and on the first Tuesday in April in every year thereafter, and then and there, in the usual manner of electing town officers, to choose six freeholders who shall be resident in the said township, for trustees; which trustees, when so chosen, or a majority of them, shall and may order and dispose of all or any part of the undivided lands within the said township, as fully and amply, to all intents, constructions and purposes whatsoever, as trustees have used and been accustomed to do under any patent or patents, charter or charters, heretofore given or granted to the freeholders and inhabitants of the said township. And also, that it shall and may be lawful for the trustees to be chosen and elected by virtue of this act, to lease out the right and privilege of setting up, keeping and maintaining a ferry across the East river, from the said township of Westchester to the township of Flushing, in Queen's county, in like manner, and under the same rules and regulations, and for the like purposes as are prescribed for the townships of Oyster-Bay and New-Rochelle, in and by

18th sess. ch. 46.

an Act establishing and regulating ferries across the East river, between the counties of Queen's and Westchester, passed at this present meeting of the legislature. Provided

Rates of ferriage.

always, That the rates of ferriage to be demanded, received or taken in such ferry, to be kept from the said township of Westchester to the township of Flushing, shall not exceed the three fourth parts of the rates of ferriage, for the like persons and articles, by the said act allowed to be taken and received at the ferry to be kept from the township of New-Rochelle.

II. *And be it further enacted by the authority aforesaid, That the district formerly called and known by the stile of the borough and town of Westchester, shall henceforth be called and known by the name of the township of Westchester.*

C H A P. LXXIII.

See 7th sess. ch. 64.
Sec. 47 and 48.

An ACT for the Relief of Thomas Clarke, and for other Purposes therein mentioned.

Passed 20th April, 1785.

WHEREAS the undivided moiety of twelve thousand acres of land situate in New Perth, in the county of Washington, lately known by the name of Charlotte county, hath become vested in the people of this State, by the attainder of Oliver De Lancey, who held the same in common, with Peter Du Bois. And whereas the said Peter Du Bois, was also attainted—and the said Oliver De Lancey and Peter Du Bois, before their attainder, granted the said twelve thousand acres of land to Thomas Clarke, in fee, reserving yearly rent of one shilling an acre forever, and afterwards the said Thomas Clarke granted the said lands to a number of persons in severalty, in fee, reserving the same rent on each respective grant. And whereas the said Peter

Du Bois, before his attainder, mortgaged his estate in the said lands for a considerable sum of money, to Jonathan Mallet; and afterwards, That is to say, On the twentieth day of December, in the year of our lord one thousand seven hundred and seventy, having become insolvent, did grant and convey, among other things, all his estate in the lands above mentioned, to certain trustees therein named, and to their heirs and assigns, to be converted into money; and after discharging the above mentioned mortgage, to be distributed among his creditors named in a certain schedule annexed to the indenture, purporting such conveyance as aforesaid. And whereas the said Peter Du Bois is since dead, and the said Thomas Clarke hath, by his humble petition to the legislature, prayed leave to surrender his estate in the said lands, on being released from the covenants entered into by him with the said Oliver De Lancey and Peter Du Bois; and that he may receive a compensation for procuring settlers on the said lands by his industry and exertions, agreeable to certain engagements entered into with him by the said Oliver De Lancey and Peter Dubois; and the trustees of the creditors of the said Peter Dubois having signified their desire, that the said Thomas Clarke shall make such surrender, and be discharged from the covenants entered into by him as aforesaid, so far as respects the moiety vested in them under the said Peter Du Bois. And that they may also be more effectually enabled to accomplish the said trust, which from the attainder of one of the said trustees, is embarrassed with difficulties; and the Legislature being willing to comply with the petition of the said Thomas Clarke, so far as the said lands are vested in the people of this state; and in order that the embarrassments attending the execution of the said trust, should be removed; Therefore,

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the*

The estate and right of Thomas Clarke in certain lands, conveyed to him by Oliver De Lancey and Peter Du Bois vested one half in the state, and the other in the trustees of Peter Du Bois's creditors.

estate, right, title, rents, issues, profits, reversions and remainders, of and in the said tract of land and premises, whereof the said Thomas Clarke is in any wise seised, or entitled by virtue of, or under the grant and conveyance so to him thereof made by the said Oliver De Lancey and Peter Du Bois, in manner aforesaid, and all and every indenture, covenant, grant, agreement and reservation to him made and

entered into with the said Thomas Clarke, for or in respect of the said tract of land, by all and every his grantees and under-tenants, to whom he hath granted and conveyed the same, or any part or parcel thereof, shall be, and hereby are fully and absolutely transferred and vested in manner and form following, That is to say, One full and equal undivided moiety, or half part thereof, in the people of this state, and the other full and equal undivided moiety, or half part thereof, in such of the surviving trustees of the creditors of the said Peter Du Bois, as are or may be capable in the law to execute the said trust, and on or before the twelfth day of August next, shall take an oath faithfully to account to the people of this state, for the surplus of the monies arising from the moiety of the said land and premises, which shall remain in their hands, after paying the debts in the said schedule mentioned, if any surplus there shall be; which oath shall be administered by one of the judges of the supreme court, and filed in the secretary's office. And it shall and may be lawful for the people of this state, and for such of the trustees of the creditors of the said Peter Dubois, as aforesaid, respectively to have and maintain separate suits and actions in their own names severally, for the recovery each of the equal moiety of all or any of the said lands and tenements, and the rents,

issues and profits thereof, or reserved thereupon, which at and immediately before passing of this act, were vested in, or forfeited or due, and in arrear to the said Thomas Clarke, or which thereafter shall or may become forfeited or in arrear, as fully and amply as the said Thomas Clarke might or could have sued for or recovered the same, had this act never been passed.

II. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the commissioner of forfeitures for the eastern district of this state, and he is hereby authorized and required to grant, sell and dispose of the estate, right and interest of the people of this state, in and to the moiety of the said lands, and the rents, issues and profits thereof, in the same manner as by law he may or ought to grant and convey other lands and tenements, belonging and forfeited to the people within the said eastern district. And in like manner it shall be lawful for such trustees or trustee of the creditors of the said Peter Du Bois, to grant, sell and dispose of the moiety of the right, estate and interest so vested in them, of and in the said lands and tenements, and the rents, issues and profits thereof. Provided always, That no act or deed, grant or release, action or suit, judgment or execution, to be made executed, sued or prosecuted on the part of the people of this state, with respect to the said lands and tenements, or the rents and profits thereof, shall in any wise affect the moiety thereof so vested in the trustees of the creditors of the said Peter Du Bois, or prejudice or bar any action or suit by them to be commenced or prosecuted respecting the same; and that no act or deed, grant or release, action or suit, judgment or execution, to be done, executed, sued or prosecuted by or on the part of the trustees for the creditors of the said Peter Du Bois, with respect to the moiety of the said lands and premises, or the rents, issues and profits thereof, so vested in them, shall in any way affect the moiety thereof vested in the people of this state, or bar any action or suit by or for them to be commenced or prosecuted respecting the same; but until partition shall be made thereof, the people of this state, their grantees and assigns, shall be entitled to, and have, recover and receive, one equal moiety of the rents, issues and profits, reserved on and payable out of the said lands and premises; and the trustees of the said Peter Du Bois, their grantees and assigns, the other equal moiety thereof. Provided always, That the said trustees of the creditors of the said Peter Du Bois, shall faithfully account to the treasurer of this state, for any surplus which may remain in his hands, after paying and satisfying the debts mentioned in the schedule annexed to the deed of trust from the said Peter Du Bois; and also such proportion or dividend of the said estate, as is or may be due to Henry White, Isaac Low and John Tabor Kemp, three of the creditors of the said Peter Du Bois, named in the said schedule, their estate being forfeited to and vested in the people of this state, by attainder; which proportion or dividend may be paid by the under-tenants of the said Thomas Clarke, proportionably, in such certificates as are receivable by law in the purchase of lands forfeited to the people of this state.

III. *And be it further enacted by the authority aforesaid,* That as a compensation for the services and expences of the said Thomas Clarke, in promoting the settlement of the said lands, the treasurer of this state pay to him the sum of fifty pounds, in specie, and grant to him a certificate or certificates, for one hundred and fifty pounds, which shall be receivable in payment on the sale of confiscated estates. Provided always, That the said Thomas Clarke shall previously pay to the said commissioner, such of the rents and ar-

Trustees to account
to the treasurer for
surplus, and for the
dividends of White,
Low and Kemp.

years of rent, as the said Thomas Clarke has received from any of the tenants aforesaid, and which he has not paid, or for which he has not accounted to the said Oliver De Lancey and Peter Du Bois. And provided also, That the said Thomas Clarke do previously pay to the said commissioners, such sum or sums of money as he shall or may have received in consequence of his sale of any of the said lands, on account of the tenants not paying their rents, or not performing any of the covenants or agreements contained in any of the leases granted to the said tenants; and that in such case, the said Thomas Clerk, his heirs, executors and administrators, shall be finally discharged from the covenants by him entered into with the said Oliver De Lancey and Peter Du Bois, respecting the said lands.

C H A P. LXXX.

An ACT authorizing the Auditor to audit certain Accounts and Claims, and for other Purposes there mentioned.

Passed 22d April, 1785.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the auditor of this state be, and is hereby directed to liquidate the accounts of Udny Hay, late state agent, in the best manner he can, and to obtain from the said Udny Hay, all the accounts and vouchers he has in his possession, with a particular account of the monies he has advanced to the deputies under him: and the said auditor is hereby directed to charge each respective deputy with the amount of each respective sum, and each of them respectively, are hereby directed to settle with the said auditor in three months from the passing this act.

Deputies to produce to the auditor, all vouchers respecting their agency on oath.
II. *And be it further enacted by the authority aforesaid,* That the respective deputies shall produce to the auditor, all the accounts and vouchers respecting their agency; and they shall particularly make a return of all the certificates they have respectively issued, to whom issued, and to what amount; and shall take the following oath (or if of the people called Quakers) affirmation:

I do solemnly swear (or affirm) that the return herewith delivered to the auditor of this state, is a just and true return of all the certificates I have countersigned as deputy under the state agent; and that I have issued none but to persons from whom I have actually received supplies, or services performed for the use of the army, to the amount of the sum mentioned in such certificate; and that such supplies furnished, were disposed of, and services performed, were agreeable to the direction of the state agent; and the said return herewith delivered, contains the whole number I have issued.

How the auditor is to state the accounts of the agent and his deputies.
III. *And be it further enacted by the authority aforesaid,* That the said auditor is hereby directed, from the accounts delivered in by the said agent and his deputies, to examine and enter in a book, alphabetically, the names of all persons to whom certificates have been given, by whom countersigned, and for what amount; a copy of which he is to deliver to the treasurer of this state: and the said treasurer is hereby directed to enter in a book for the purpose, the number of each certificate that is paid in to him; the name of the deputy who countersigned them, name of the person in whose favour the certificate

was drawn, and the amount thereof; and to carefully examine and compare the said account with that delivered in by the auditor; and if on such examination he finds any certificates paid in to him, and for which there is no return made thereof by the agent, or any of his deputies, it is hereby made the duty of the treasurer to examine into every such case; and where it appears to him, there has been certificates issued with an intent to defraud the state, the said treasurer is hereby directed to prosecute to effect, every such person who issued them.

IV. *And be it further enacted by the authority aforesaid,* That the auditor, in liquidating the accounts of the said state agent, shall allow the said deputies, in lieu of all pay and services, as follows: For purchasing every hundred weight of meal or flour, one shilling; every bushel of grain and vegetables, four-pence per bushel; every hundred weight of beef or pork, one shilling and six-pence; and twelve shillings per day for purchasing hay, while in actual service.

V. *And be it further enacted by the authority aforesaid,* That all balances that may be found due to any or either of the deputies under the state agent, the treasurer is hereby directed to give every such person, upon producing a certificate from the auditor, a certificate for the amount thereof, bearing interest at five per cent. per annum; which certificates shall be such as are receivable in the purchase of forfeited and confiscated estates.

VI. And whereas it is probable, in the settlement of the said state agent's accounts, that difficulties may arise, for want of vouchers and papers that have been destroyed by fire: *Be it enacted,* That the auditor in the settlement of all the accounts with the said state agent and his deputies, shall take his directions from the committee appointed by the legislature on the * eighteenth day of November last, and shall state the said accounts in such manner as they shall direct; and shall, for want of proper vouchers, admit such evidence as the committee may think proper; and the said committee are hereby authorized and directed to admit such evidence upon every particular case, as they may think proper, and to adjust and settle all such accounts upon the principles of equity and good conscience.

VII. And whereas by an act, entitled, † An act for the settlement of the pay of the levies and militia, passed the twenty-seventh day of April, one thousand seven hundred and eighty-four, the officers receiving certificates for services, are directed, within nine months, to render a just and true account of the delivery of the same, with vouchers of payment; and in case any shall remain in his or their hands, shall return the same to the said treasurer: And whereas it has been represented to the

legislature, that abuses have been committed by some of the officers, and the certificates not delivered agreeable to law, the said treasurer shall, and is hereby directed to prosecute, in three months after the expiration of the said nine months,

in his own name, in any court of record in this state, having cognizance of the same, every delinquent person, and for the whole amount of such sums for which certificates were issued: And the treasurer is hereby directed to require of every person returning such vouchers and receipts, to take the following oath before him, or any justice of the peace in this state, that the receipts they respectively produce from the individuals to whom the certificates belonged, were, bona fide, signed by them, or their legal representatives,

Treasurer to prosecute militia officers who have not accounted for certificates, &c.

* This is a mistake, no such committee was appointed on that day; but see 8th sess. ch. 18. sec. 23.

to the best of their knowledge and belief; which oath said treasurer is hereby authorised to administer.

VIII. And whereas large sums of money have been advanced from time to time, in the course of the late war, to persons who have not as yet accounted for the same, and other persons have in their hands monies for property by them sold, belonging to the state; and as it is necessary that all such accounts should be immediately settled; *Be it enacted by the authority aforesaid,* That the treasurer of this state do notify all persons who are indebted to this state, in one or more news-papers printed in the cities of New-York and Albany, for six weeks successively, to bring in their accounts and vouchers for settlement, on or before the first day of October next, and in case of neglect or refusal, the treasurer is hereby directed to prosecute, in his own name, to effect, every such delinquent person.

IX. *And be it further enacted by the authority aforesaid,* That the auditor of this state, by and with the consent of the committee appointed to assist the auditor, be, and is hereby authorised to liquidate and settle any account or claims which any of the citizens of this state may have against the said state agent or any of his deputies. And the treasurer of this state is hereby directed, upon certificate of the auditor, to grant a certificate for such sums respectively, as may be found due.

X. *And be it further enacted by the authority aforesaid.* That the collector for the ports of New-York and Sagg Harbour, shall respectively produce to the auditor of this state, within two months from the passing of this act, a true and just return on oath, of all the goods, wares and merchandize subject to duty by the act passed the twenty-second day of March, 47th sess. ch. 10. one thousand seven hundred and eighty-four, entitled, † An act imposing duties on the importation of certain goods, wares and merchandize; and also a true and just return of all the fees received in each respective office; and on a final examination and settlement of each respective account, the auditor of this state is hereby directed to certify to the treasurer the amount thereof, and the treasurer is hereby directed to call on each respective collector, for the balance of each account, if any be due.

XI. *And be it further enacted by the authority aforesaid,* That the auditor of this state, upon the settlement of each respective account where there is a balance due to the state, the committee appointed to assist the said auditor shall with the auditor and treasurer, or a majority of them, determine how the said balance shall be paid into the treasury; and the said committee, with the auditor and treasurer, are hereby authorised to examine and ascertain upon each particular account, upon the principles of equity and good conscience, and determine what balances ought to be paid in the paper money and other state securities, and what in specie.

XII. And whereas great abuses have been committed by the treasurers under the late colony, in converting the public money to private uses, by which means the state have suffered great losses; and it becomes the duty of the legislature, in future to provide against every such abuse; *Be it enacted by the authority aforesaid,* That the committee appointed to assist the auditor in the settlement of the public accounts, be, and is hereby authorised and directed to examine into the accounts of the treasurer of this state, and his successors in office, and from time to time, and at least once in every year, to ascertain and fully balance his account for the preceding year; and once in every six

months after passing this act, they are hereby directed to ascertain and examine his cash account, and to see whether the balance due to the state is actually in the treasury; and the said committee are hereby directed to lay a state of the treasury before the legislature, at their next meeting.

Fourth section of
the vendue act re-
pealed.
7th sess. ch. 4.

XIII. *And be it further enacted by the authority aforesaid,* That the fourth section of the act, entitled, † An act for the regulation of sales by public auction, passed the 11 tenth day of February, one thousand seven hundred and eighty-four, be, and is hereby repealed.

Vendue-masters to
account every three
months to the trea-
surer.

XIV. *And be it further enacted by the authority aforesaid,* That every vendue-master or vendue-masters, auctioneer or auctioneers, qualified and licenced as is by the before-cited act directed, and during the continuance thereof, who shall sell and dispose of any goods, chattels, wares, merchandize or effects, at public vendue, auction or outcry, shall, within twenty days after the expiration of every three months, the first three months to be computed from the date of the licence granted to such vendue master or vendue-masters, auctioneer or auctioneers respectively, render a just and true account in writing, by him or them respectively, with his or their name or names subscribed, to the treasurer of this state for the time being, of all goods, wares, merchandize or effects, by him or them sold at public vendue, auction or outcry, from the time of his or their appointment, or the time that the last account by him or them was rendered to the treasurer as aforesaid, the amount of each day's sale, and the days when the same were respectively sold; and shall thereupon take the following oath, or (if of the people called Quakers) affirmation:

I do solemnly and sincerely swear (or affirm) that the account now exhibited by me, and to which I have subscribed my name, contains a just and true account of all the goods, wares, merchandize and effects sold by me, subject to duty by law, within the time mentioned in the said account, and of the days upon which the same were respectively sold. So help me God.

And in ten days to
pay the duties paya-
ble by the a.

And such vendue-master or vendue-masters, auctioneer or auctioneers respectively, shall, within ten days after the rendering of such account and taking the said oath, pay to the treasurer of this state for the time being, the amount of the duty upon such account of sales by virtue of this act, according to the true intent and meaning thereof. Provided always, That it shall and may be lawful for such vendue-master or auctioneer, whose residence shall be more than sixty miles from the city of New-York, to render his said account, and to pay the amount of such duties as by this act he is directed to pay unto the treasurer of this state, within twenty days after the expiration of every six months, the first six months to be computed from the date of the licence granted to such vendue-master or auctioneer.

XV. *And be it further enacted by the authority aforesaid,* That if any auctioneer or auctioneers shall neglect or refuse to render his or their account, or to pay the money due from him or them to the state, for the duties, according to law, the treasurer of this state shall and may, in every case of such neglect and refusal, certify and publish the same in one or more of the public news-papers of this state; and from the time of publishing such advertisement

† This is a mistake, the act passed the twentieth. See 7th sess. ch. 4.

as aforesaid, the licence of every such delinquent auctioneer shall be, and is hereby declared to be revoked, null and void.

XVI. *And be it further enacted by the authority aforesaid,* That when any person or persons that are entitled to the relief provided by the forty-fifth section of the act, entitled, *† An act for the speedy sale of the confiscated and forfeited estates within this state, and for other purposes therein mentioned,* passed the twelfth day of May, one thousand seven hundred and eighty-four, are of the people called Quakers, it shall be lawful for them to affirm, instead of taking the oath therein prescribed.

XVII. *And be it further enacted by the authority aforesaid,* That the treasurer of this state is hereby authorized and required to grant a certificate in the usual form, bearing interest at the rate of five per cent. per annum, from the time such money ought to be paid, as a bounty for apprehending deserters, to any person or persons producing a certificate agreeable to an act, entitled, *† An act to encourage the apprehending of deserters from the troops of this state, serving in the army of the United States,* passed the first day of July, one thousand seven hundred and eighty-one.

XVIII. *And be it further enacted by the authority aforesaid,* That it shall be lawful for the commissioners of forfeitures, and for the late commissioners of sequestration, in the respective districts, and they are hereby directed to receive from the persons who are or were the tenants on forfeited or sequestered estates, for rents due from such tenants respectively, previous to the first day of April, one thousand seven hundred and eighty-three, such certificates are directed to be received in payment for forfeited estates, by an act, entitled, *An Act for the speedy sale of the confiscated and forfeited estates within this state, and for other purposes therein mentioned,* passed the twelfth day of May, one thousand seven hundred and eighty-four; and that it shall be lawful for the late commissioners of sequestration in the several counties in this state, or any other person or persons properly authorized by law for that purpose, to take and receive in payment from any person indebted to the commissioners, for any article or articles heretofore sold by them, any of the certificates aforesaid. Provided, That where rents are reserved in wheat, the said commissioners are hereby directed to charge each respective tenant at and after the rate of eight shillings per bushel. Provided, That such payments are made before the first day of October next: And also provided, That no interest shall be allowed or computed on the said certificates in their payments for the rents, and articles sold as aforesaid.

XIX. And whereas, in the thirty second clause of the act, entitled, *† An act to compel the payment of the arrears of taxes, for enforcing the payment of [* the arrears of taxes, for enforcing the payment of] fines and amerciaments, obliging sheriffs to give security for the due execution of their offices, and for other purposes,* passed November the twenty-sixth, one thousand seven hundred and eighty-four, no express authority is given to the treasurer to sue for, recover and receive of such sheriff or sheriffs so accounting, the money for which he may be so accountable to the auditor of this state, pursuant to the said thirty-second clause of the above mentioned act: Therefore, *Be it further enacted by the authority aforesaid,* That the treasurer of this state for the time being, be, and he is hereby directed and empowered to sue for, recover and receive of and

† 8th sess. ch. 16.

** So in the original.*

from each respective sheriff so accounting, all such monies for which he shall in any wise be accountable, agreeable to the said thirty-second clause of the above mentioned act.

XX. And whereas colonel Marinus Willet, in the progress of the late war, and while he commanded a body of the troops of this state, conceived it to be his duty to take possession of and secure a considerable number of cattle and other effects, the property of some of the frontier inhabitants, who were removed from their habitations on account of their attachments to the enemy; the greatest part whereof hath been applied to public uses, and the remainder sold to individuals. And it appears from the representation of the said Marinus Willet, that he hath taken receipts, certificates and notes, in his own name, for the said cattle and effects; which receipts, certificates and notes he is desirous to transfer and surrender for the use of the people of this state: Therefore, *Be it further enacted by the authority aforesaid*, That it shall and may be lawful for the said Marinus Willet, and he is hereby authorized and required to render an account, on oath, to the auditor of this state, of the cattle and effects so by him, or under his authority, secured and taken in manner aforesaid, and of the application, sale and disposal thereof, and of all vouchers, receipts, certificates, notes and money which he may have received or become possessed of, in any wise respecting the same; and shall thereupon transfer, surrender and deliver up to the treasurer of this state, for the use of the people thereof, all such vouchers, receipts, certificates, notes and money; in order that such of the said cattle as have been applied for the support of the troop, or army, may, in due manner, be charged and brought into account against the United States: And that the former owners of the said cattle and other effects, who are entitled by law to satisfaction, may have an opportunity of applying to the legislature for the same.

And indemnified on complying with this law.

XXI. *And be it further enacted by the authority aforesaid*, That on complying with what is required by this act the said Marinus Willet shall be, and he hereby is fully and absolutely indemnified, and saved harmless for all and every his acts and proceedings, touching the said cattle and effects. And no suit or action in law or equity, shall be sued or maintainable against him, by any person or persons whomsoever, for or in respect thereof.

XXII. *And be it further enacted by the authority aforesaid*, That no actions, suits or prosecutions whatsoever, commenced or hereafter to be commenced, for or on account of the execution of the said office of state agent, or by any of his deputies shall be deemed, taken, or carried into effect against the said state agent or any of his deputies, until the rising of the legislature at the next meeting, except where it is otherwise directed by this act.

C H A P. LXXXI.

An ACT to prevent the Firing of Guns and other Fire-Arms within this State, on certain Days therein mentioned.

Passed 22d April, 1785.

WHEREAS great dangers have arisen, and mischief been done by the pernicious practice of firing guns, pistols, rockets, squibs, and other fire-work; on the eve of the last day of December, and first and second days of January; For prevention whereof for the future,

Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the Authority of the same, That if any

Persons discharging
fire-arms on certain
days, and within cer-
tain limits to pay a
fine of forty shillings.

person or persons whomsoever, shall fire or discharge any gun, pistol, rocket, squib or other fire-work, within a quarter of a mile of any building, on the said eve or days before mentioned, every such person or persons so offending, and being thereof convicted before any justice of the peace of the city or county where such offence shall be committed, either by the confession of the party or parties so offending, or the oath of any one credible witness, shall, for every such offence, forfeit the sum of forty shillings, with costs of suit, to be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of the said justice before whom such conviction or convictions shall be had as aforesaid; the one moiety of which forfeiture to be applied to the use of the poor of the town or place wherein such offender shall be convicted, and the other moiety to the use of the person or persons who shall prosecute for the same; and for want of sufficient distress whereon to levy the same, every such justice is hereby empowered and required, by warrant under his hand and seal, to commit every such person or persons so as aforesaid offending, to the common goal of the county wherein the said forfeiture shall arise, there to remain without bail or mainprize, for the space of one month, unless such forfeiture or forfeitures be sooner paid.

C H A P. LXXXIII.

An ACT for incorporating the Inhabitants residing within the Limits therein mentioned.

Passed 22d April, 1785.

WHEREAS the inhabitants of that part of Claverack district herein after particularly mentioned and described, with other inhabitants of the said district, have, by their petition, among other things represented to the legislature, that a number of the said inhabitants having commercial objects in view, have emigrated from the neighbouring states, and purchased a tract of land in the said district adjacent to Claverack landing, and made at a great expence, a settlement thereupon; that they intend carrying on an extensive commerce, and that in order to facilitate their undertakings, and to enable them to regulate their own concerns and internal police, to adjust such differences as may arise within their own limits, and give stability and permanent security to their settlement, have prayed that the district of country, contained within the limits herein after particularly mentioned, might be separated from the said district of Claverack, and that the inhabitants thereof might be erected into a body politic and corporate, with such powers, jurisdictions, privileges and immunities, as should be deemed requisite to answer the beneficial purposes intended by such incorporation. And whereas the legislature are inclined to give every suitable encouragement to the extension of the commerce of this state, and speedy population thereof:

I. Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the district of country contained within the following limits, to wit.

Part of Claverack
district declared to be
a body corporate and
politic, by the name
of, The mayor, recorder,
aldermen and
commonalty of the
city of Hudson, &c.

Beginning at the channel of the Hudson's river in the county of Albany, directly opposite the mouth of the creek commonly called major Abraham's creek; thence to and up the middle of said creek, to the place where the Claverack creek empties into the said major Abraham's creek; thence up along the

middle of said Claverack creek, until the said Claverack creek strikes the line of the manor of Livingston, as now held and possessed; thence along the line of the said manor of Livingston, to the east side of Hudson's river; thence into the said river, one hundred and eighty feet below high-water mark; thence to the place of beginning, keeping the same distance of one hundred and eighty feet, all along from high-water mark aforesaid, be, and is hereby separated from the said Claverack district; and that all the freemen of this state, inhabitants within the aforesaid limits, be, and hereby are ordained, constituted and declared to be, from time to time, and forever hereafter, one body corporate and politic, in fact and in name, by the name of, The mayor, recorder, aldermen and commonalty of the city of Hudson; and that by that name, they and their successors forever shall and may have perpetual succession, and shall be persons in law capable of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended, in all courts and places whatsoever, in all manner of actions, suits, complaints, matters and causes whatsoever, and of what kind or nature soever; and that they and their successors may have a common seal, and may change and alter the same at their pleasure; and also, that they and their successors, by the same name of, The mayor, recorder, aldermen and commonalty of the city of Hudson, shall be in law capable of purchasing, holding and conveying any estate, real or personal, for the public use of the said corporation. Provided nevertheless, That all such real estate shall lie and be included within the limits of the said city of Hudson only, and not elsewhere. Provided always, That it shall and may be lawful to and for all and every the citizens, sojourners, and travellers within this state, at all times forever hereafter, to have the free use and enjoyment of all and every the high-ways, roads and landing-places within the limits of the said city, which have heretofore been used and enjoyed as such, and that without any toll, claim or demand of the said corporation for the same, or any other interruption whatsoever, or any alteration of such road or high-way, without the consent and approbation of the commissioners of the high-ways of the district next adjoining to the said city, whose inhabitants shall make use of such road or high-way; any thing in this act contained to the contrary hereof in any wise notwithstanding.

II. *And be it further enacted by the authority aforesaid,* That there be, and forever hereafter there shall and may be, in and for the said city, one mayor, one recorder, four aldermen, four assistants, one common clerk, one chief marshal, one chamberlain, one supervisor, and as many assessors, collectors and constables, as the common council for the said city of Hudson, herein after constituted and made, shall, from time to time, deem necessary, and direct to be chosen and elected; which supervisor, assessors, collectors and constables, so deemed necessary and directed to be chosen, shall, forever hereafter, be chosen and elected in the manner, and at the time and place herein after directed and appointed for the annual election of officers within the said city.

III. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for his excellency the governor, or person administering the government of this state for the time being, by and with the advice and content of the council of appointment, and he and they are hereby authorised and required, within one month after the passing of this act, and yearly forever thereafter, at such time as the said council shall be assembled immediately after the first day of May in every year, to nominate and ap-

point, out of the citizens and inhabitants of the said city of Hudson, one fit and discreet person to be mayor of the said city, and one fit and discreet person to be recorder of the said city; which said mayor and recorder, after such appointments respectively, shall continue in their said respective offices, to do and to execute all things which to their said several offices doth or may severally and respectively belong, or in any manner appertain, until other fit persons be appointed and sworn in their room; and in like manner, a fit and discreet person shall be appointed out of the said citizens and inhabitants, to be common clerk of the said city, who shall hold and continue in office during the will and pleasure of the governor and council of appointment, and also another fit and discreet person shall be appointed out of the citizens and inhabitants of the said city, to be the chief marshal thereof, whose duty it shall be to execute writs, processes and precepts, to raise and be issued within the said city, from the courts and magistrates thereof, in and about the administration of justice, in the same manner as the sheriffs of other cities and counties are by law authorised to execute such writs, processes and precepts; and which chief marshal shall be from time to time, appointed, and shall hold and exercise his office for such period as sheriffs of other cities and counties by law are or ought to be appointed, or may or ought by law to hold and exercise their respective offices; which said mayor, recorder, clerk and marshal, shall be annually nominated and appointed in manner and form aforesaid, until otherwise directed by the legislature.

IV. *And be it further enacted by the authority aforesaid*, That on the second Monday in May next, and on the second Monday in May in every succeeding year forever thereafter, the freemen of the said city, being inhabitants thereof, shall and may assemble themselves, and meet together at such time of the day, and at such public place as the mayor for the time being, or in his absence or sickness, the recorder for the time being, shall appoint, and then and there, by plurality of voices or votes, elect and chuse out of the freemen, inhabitants of the said city, for the ensuing year, four aldermen, four assistants, one supervisor, and such a number of assessors, constables and collectors, as the common council for the said city shall, from time to time, deem necessary, and direct to be chosen.

V. *And be it further enacted by the authority aforesaid*, That the mayor, or recorder of the said city for the time being, and two or more of the aldermen, and two or more of the assistants of the said city, shall and may, on the second Monday in May next, and on the second Monday in May in every succeeding year, forever thereafter, in common council, nominate and appoint one fit person, being a freeman and inhabitant of the said city, to be the treasurer and chamberlain of the said city, for the year ensuing; every of which said person as are herein before nominated, or hereafter to be nominated, elected and appointed to any civil office within the said city, shall, within fifteen days next after such appointment or election, respectively take and subscribe the oath of abjuration and allegiance, now or hereafter appointed by law (or if of the people called Quakers, an affirmation) and also an oath or affirmation, as the case may require, for the faithful execution of the office to which he or they shall so be appointed.

VI. *And be it further enacted by the authority aforesaid*, That if any one of the freemen, inhabitants of the said city of Hudson, shall hereafter be elected or chosen to the office of alderman, assistant, supervisor, or assessor, collector or constable, for the said city, and having notice of his said election, shall refuse, deny, delay or neglect, to take upon him or them to execute such

office to which he or they shall be so chosen or elected; that then, and so often as it shall happen, it shall and may be lawful for the mayor or recorder, or any two or more of the aldermen, and any two or more of the assistants of the said city for the time being, in common council, to assess and impose upon every such person or persons for refusing, delaying or neglecting, such reasonable and moderate fine and fines, sum and sums of money, as they, in common council, shall think fit, so as such fine for each refusal, denial, delay or neglect, shall not exceed the sum of ten pounds, current money of New-York; all which said fines shall and may be levied by distress and sale of the goods and chattels of such delinquent and delinquents, by warrant under the seal of the said city; signed by the mayor thereof for the time being, rendering the surplusage to the owner or owners thereof (if any there be) necessary charges of making and selling such distress, being first deducted; or by action of debt in any court of record within the jurisdiction of the said city, having cognizance of the same, to be prosecuted, and shall be recovered and received by and to the use of the said mayor, aldermen and commonalty of the said city, and their successors forever.

VII. *And be it further enacted by the authority aforesaid,* That in all such cases forever hereafter, of the absence, sickness, or death of the mayor of the said city for the time being, it shall and may be lawful to and for the recorder of the said city for the time being, to do and execute all and singular the duties and trusts to the office of the said mayor belonging and appertaining, to all intents, purposes and constructions whatsoever, during the absence or sickness of such mayor, or until a successor be duly appointed and sworn.

VIII. *And be it further enacted by the authority aforesaid,* That if it shall happen that any of the aldermen or assistants, supervisor, assessors, collectors or constables, or any one of them hereafter to be elected, nominated and sworn in their respective offices as aforesaid, shall happen to die or remove out of the said city, within the time they are or shall be respectively named or elected for, or before other fit persons be respectively named or elected, and sworn in their respective rooms, it shall and may be lawful for the freemen, inhabitants within the limits of the said city, to assemble and meet together, at such time and place as shall be appointed by the mayor of the said city for the time being, and then and there, by plurality of votes, to elect one of the freemen, an inhabitant within the limits of the said city, to serve as alderman, assistant, supervisor, assessor, collector or constable, in the room of such alderman, assistant, supervisor, assessor, collector or constable, so dying or removing, and so often as such cases shall happen; and in case of the death or removal of the treasurer or chamberlain, out of the limits of the said city, for the common council to appoint another in his stead, at any time after such death or removal: And that all and every such person and persons so to be newly chosen or appointed and sworn, shall serve in their respective offices until other fit persons be respectively chosen or appointed, and sworn in their respective rooms.

IX. *And be it further enacted by the authority aforesaid,* That the chief marshal so to be nominated and appointed, and every marshal to be thereafter nominated and appointed, shall, before he shall be deemed capable of executing his said office, become bound, with such sureties, in such manner and under such penalty for the faithful discharge of the duties of his office, as the sheriffs of other cities and counties are or shall be by law directed and required to be bound for the faithful execution of their offices.

X. *And be it further enacted by the authority aforesaid,* That the treasurer, collectors and constables to be hereafter chosen and appointed, shall, before they enter on the execution of their respective offices, respectively give such security for the faithful discharge of the trusts reposed in them, as the mayor, recorder and common council of the said city shall deem sufficient.

XI. *And be it further enacted by the authority aforesaid,* That the mayor, recorder, aldermen and assistants of the said city for the time being (whereof the mayor or recorder always to be one) be, and shall be forever hereafter called, The common council of the city of Hudson; who, or the major part of them, shall have power to make bye-laws relative to the public markets within the said city, so as such bye-laws shall not extend to the regulating or ascertaining the price of any commodity or article of provision, which may be brought for sale within the said city; relative to the streets and highways of the said city; relative to nuisances within the limits of the said city; relative to the cleaning of chimnies, and preventing the said city from fire; relative to the manner of warning the meetings of the said city, and the common council thereof, and the time and place where they shall be holden; relative to a city watch; relative to bonds and securities to be given by constables, collectors, treasurers, or any other officer of the said city, for the faithful discharge of the duties of such office or offices; relative to the burial of the dead; relative to the public lights or lamps of the said city; relative to the restraining geese and swine going at large within the limits of the said city; relative to the overseeing of the poor, and relative to any thing whatsoever which may concern the good government and police of the said city.

Bye-laws not to be inconsistent with the constitution, or laws of the state.

Provided, That such bye-laws be not contrary to, or inconsistent with the constitution, laws and statutes of this state; and that the said common council of the said city for the time being, or the major part of them, as often as they shall

make, ordain and publish such laws for the purposes aforesaid, may make ordain limit and provide such and the like pains, punishments and penalties fines and amerciaments, upon, towards and against, all and every person that shall offend against such laws, statutes, rights and constitutions, or any or either of them, as by the said common council, or the major part of them, shall be thought requisite to make, ordain, limit and provide for the observation and preservation of the same laws, statutes, rights and constitutions, to be prosecuted and recovered in any court of record within the jurisdiction of the said city, having cognizance of the same, by action of debt or otherwise, to the use of the said mayor, aldermen and commonalty of the said city of Hudson, and their successors forever.

To continue in force for one year.

Provided also, That no such bye-laws shall continue in force longer than for the term of one year.

Common council, how and when to be convened.

XII. *And be it further enacted by the authority aforesaid,* That the common council of the said city, shall be summoned, called and held from time to time, so often and at such times and places, as the mayor, or in case of his sickness or absence, the recorder of the said city for the time being, shall think fit to appoint or direct; and that it shall and may be lawful to and for the said common council of the said city, or the major part of them, to assess and lay such reasonable fines and amerciaments, in and upon every officer and member of the body corporate aforesaid, for the time being, who after having had due notice, or being duly summoned to appear or attend at any such common

council to be held for the said city, shall neglect so to do, or make default therein, or shall not appear or attend according to such notice or summons in that behalf, or shew a reasonable cause (by the same common council, or a major part of them, at their discretion, to be allowed) and so as often as such case shall happen, so that no such fines or americiaments for any one default of appearance or attendance of any such officer or member aforesaid, shall exceed the sum of twenty shillings, in the manner and form aforesaid, to be levied for the use of the said mayor, aldermen and commonalty of the said city, and their successors, to be recovered and received.

XIII. *And be it further enacted by the authority aforesaid,*

Common council to have power to establish and direct the making and laying out streets, ways, &c.

That the common council of the said city of Hudson, for the time being, or the major part of them, have, and from time to time forever hereafter shall have, full power, licence and authority to establish, appoint, order and direct the making and laying out all other streets, lanes, ways, alleys, highways water-courses, and bridges, not already made or laid out; but also the altering, amending and repairing all such streets, lanes, ways, alleys, highways, water courses and bridges, heretofore made or laid out, or hereafter to be made or laid out, in and throughout the said city, limits and precincts thereof, in such manner as the common council for the time being, or the major part of them, shall think or judge to be necessary and convenient for all inhabitants and travellers there. Provided always, That in all cases where the property of individuals is affected by the laying out, repairing or altering such streets, ways, lanes, alleys, highways, water-courses and bridges as aforesaid, the said common council shall and do proceed according to the mode pointed out to the commissioners of highways for the county of Albany, in and by certain acts of the legislature, in such cases made or to be made and provided.

XIV. And whereas a punctual and well regulated ferry across the river at the said city of Hudson, is of the utmost consequence to the good people of this state at large; *Be it therefore enacted by the authority aforesaid,* That the

Common council empowered to establish ferries across Hudson's river.

common council of the said city for the time being, or the major part of them, from time to time, and at all times forever hereafter, shall and may have full power and authority to settle, appoint, establish, order, direct and superintend, and shall and may settle, appoint, establish, order, direct and superintend, such and so many ferries from the said city to the opposite or western shore of the Hudson's river, for the carrying and transporting people, horses, cattle, goods and chattels, across the said river, in such manner as the common council of the said city for the time being, or the major part of them, shall conceive to be most conducive for the public good. Provided always, That nothing in this act contained shall extend, or be construed to, debar or deprive any of the citizens of this state, of the property or possession of the soil on the eastern or western shore, of any right which they now may or ought lawfully to enjoy, or hereafter may obtain, with respect to the privilege of ferriage; nor shall this act, nor any thing therein contained, extend to, or be deemed or construed to debar or deprive any of the citizens of this state, of any other right or privilege (as to right of soil or ferriage) which any such citizen now has, or may lawfully have or enjoy; nor shall be deemed or construed to debar or prevent Coenraedt A. Blaak, of, or from conveying or carrying across the said river, to and from either side of the said river, with a ferry-boat, any person or persons, horses, cattle, goods or chattels.

XV. *And be it further enacted by the authority aforesaid,*

Corporation to establish markets.

That the said mayor, recorder, aldermen and commonalty of the said city, and their successors, shall and may, from time to time, and at all times forever hereafter, have, hold and keep a market or markets, at such place or places within the limits of the said city, as the said common council for the time being, shall appoint and direct, on any or every day of the week (Sunday excepted) and that the said mayor for the time being is, and for ever hereafter shall be (ex officio) clerk of the said market or markets of the said city, and water bailiff for the same; and that he shall have full power and authority to do and execute, and shall and may do and execute, forever hereafter, within the liberties, limits and precincts of the said city, all and whatsoever to the said offices of clerk of the market and water bailiff, doth or may respectively appertain and belong: And also, That the mayor of the said city for the time being, shall have full power and authority, by and with the advice of the common council, to licence and appoint, by warrant under his hand and seal, or otherwise, for the said city, one or more porter or porters, carriers, cartmen, carmen, packers, cullers, common criers, scavengers, inspectors of lumber, and also one or more surveyor or surveyors, measurer or measurers, gauger or gaugers, beadles, garblers, bellmen, watchmen, bridewell-keepers, or keepers of a house or houses of correction and alms-houses, and to discharge the same at pleasure. Provided, That no gauger to be appointed by this act, shall have authority to gauge liquors or molasses for ascertaining any duty to be imposed thereon by act of legislature, unless thereunto expressly authorised by law.

Mayor to be clerk of the market and water-bailiff.

XVI. *And be it further enacted by the authority aforesaid,*

Corporation empowered to erect houses of correction, &c.

That the said mayor, aldermen and commonalty, forever hereafter, have full power and authority to erect and build one or more bridewell or bridewells, house or houses of correction, work-house or work-houses, together with full power and authority to the said mayor, recorder and aldermen, or any one of them, to take up and arrest, or order to be taken up or arrested, all or any rogues, vagabonds, stragglers, and idle and suspicious persons; and as they the said mayor, recorder and aldermen, or any one of them, shall see cause, to order any such rogues, vagabonds, stragglers, and idle and suspicious persons, either to the said work-house, there to remain and work any time not exceeding thirty days, or else to the house of correction, there to receive such corporal punishment as the said mayor, recorder and aldermen, or any three of them, whereof the mayor or recorder to be one, shall think fit; such corporal punishment not to exceed thirty-nine stripes for any one offence. And that the said mayor, aldermen and commonalty, and their successors forever hereafter, may and shall have power to erect and build an alms-house for relief of the poor, with as full power to order, direct and regulate the aforesaid houses, and the persons to be put in and ordered there, as to any city or corporation in any other part of this state, and to the officers and ministers thereof, doth or may belong.

XVII. *And be it further enacted by the authority aforesaid,* That the said mayor, recorder, aldermen and commonalty, and their successors forever hereafter, may have one or more public gaol or gaols, in such fit place or places within the said city and limits, and jurisdiction thereof, as by the common council of the said city, or the major part of them for the time being, shall be appointed, to imprison and safely keep all and every person

and persons, for any treason or treasons, murders, felonies, trespasses, evil-doings, and all other matters and causes, to be arrested or attached, or to be committed to the gaol or gaols aforesaid, in safe custody, there to remain until they be delivered by due course of law; and that the common council of the said city for the time being, or the major part of them, shall and may have power, from time to time, to chuse, constitute and place, one or more fit person or persons in the office or offices of keeper or keepers of the gaol or gaols aforesaid, to hold the same during the pleasure of the common council of the said city for the time being, or the major part of them: And

Who shall keep all prisoners in safe custody,

it is hereby empowered and commanded the keeper and keepers of the gaol and gaols aforesaid for the time being, that all and singular traitors, murderers, felons, malefactors, disturbers of the peace, and other delinquents, and all others for any crime and offence, or other reasonable causes or matters, to the gaol or gaols aforesaid, ordered or committed, or to be ordered or committed, to receive, take, keep and cause to be kept in the same gaol or gaols, until they shall be thence delivered by due course of law.

How tavern-keepers to be licensed.

XVIII. *And be it enacted by the authority aforesaid,* That the mayor, recorder, aldermen and commonalty of the said city, and no other whatsoever, shall have power to give and grant licences annually, under the public seal of the said city, to all such persons as they shall think fit to licence to keep tavern, inn, ordinary, or victualling-house, and to sell wine, brandy, rum, strong waters, cyder, beer, ale, or any other sort of exciseable or strong liquors, within the said city of Hudson, or the liberties and precincts thereof, by retail or small measure; and that it shall and may be lawful to and for the mayor, recorder, aldermen and commonalty of the said city, to ask, demand and receive, for every such licence by them to be given and granted as aforesaid, such sum or sums of money as they, and the person to whom such licence shall be given and granted shall agree for, not exceeding the sum of sixteen shillings for each licence; all which monies, as by the said mayor, recorder, aldermen and commonalty shall be so received, shall be used and applied to the public use of the said mayor, aldermen and commonalty of the said city, and their successors forever: And

Licence to continue one year.

Inhabitants may vote to raise money for a burying ground, and erecting public buildings.

that every and each of which licence shall continue and be in force for one year from the granting thereof, but no longer.

XIX. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the freemen, citizens and inhabitants of the said city of Hudson, at their annual meetings for election of officers, to vote any sum or sums of money to be raised, which they may think proper and necessary for the purchasing any lot or lots of ground within the limits of the said city, for the purpose of burying the dead, or for erecting a court-house and gaol, alms-house, work-house or house of correction, or for the purpose of the support and relief of the poor within the limits of the said city.

XX. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the mayor, recorder and aldermen of the said city, or any three of them, whereof the mayor or recorder shall always be one, to hold, on the first Tuesday in every month, one court of common pleas of record within the said city, to be called the mayor's court, which shall and may hold plea, and have cognizance of, all and all manner of plaints, suits, causes, trespasses, actions and demands whatsoever, personal and mixed, and

Mayor, recorder and aldermen to hold a court of common pleas.

sing or accruing within the said city and the jurisdiction thereof, with full power and authority to hear and determine, all and every such actions and pleas, and judgment and execution thereon to render and award; and to proceed and act therein in such manner and form, and by such and the like methods, process and proceedings, as fully and amply as in other courts of common pleas of record, in and for the respective counties in this state, in like cases can or may be acted, done, adjudged or determined, according to the laws and constitution of this state: And it shall be lawful for the said mayor's court, in every such term respectively, to continue each term to the day succeeding, inclusively, or to adjourn the first day of each term to the next term, as the despatch of the business to be depending before the said court, may, from time to time, render necessary or require.

XXI. *And be it further enacted by the authority aforesaid,* That the common clerk of the said city of Hudson for the time being, shall, and he is hereby forever declared to be the clerk of the said court of record, to do and perform all manner of, acts and things within the city aforesaid, the limits and jurisdictions thereof, which to the office of clerk of the said court of record, doth appertain and belong; and to receive, demand, have, collect, and enjoy all fees, perquisites, and profits which may to the office of such clerk belong or appertain.

XXII. *And be it further enacted by the authority aforesaid,* That the common clerk, chamberlain, marshal, constables, gaol-keepers, and all other subordinate officers of and in the said city, who hereafter may be nominated, chosen, elected, constituted and appointed, and every of them respectively, jointly and severally, as cause shall require, shall be, and hereby are commanded to be obedient to, and attend upon the judge and judges of the court of the said city, and every or any of them, at all times hereafter, according to the duty or obligation of their respective offices and places; and to execute all and every the commands, precepts, warrants to them respectively directed and issued, and given out, and to be issued and given out by the said court, or any one of the judges thereof, and that the said marshal, ministers and officers of the said city for the time being, shall and may, and they and each of them, is and are hereby authorised and commanded, to execute and return all and every the process and precepts of the said court to them respectively directed, or to be directed, from time to time, and at all times, as fully and effectually as any marshal, minister or officer of, or in any city or place within this state, the precepts or processes of any court of record therein hath used, or can or may execute and return in any manner whatsoever.

XXIII. *And be it further enacted by the authority aforesaid,* That all and every freeman, citizen, and inhabitant of the state of New-York, or any other of the United States of America, who shall become inhabitants within the limits and jurisdiction of the said city of Hudson, and who shall have therein resided for the space of four months together, and shall continue therein to reside, and shall pay any taxes, and not be disqualified by law, shall be entitled to every freedom, right, privilege and immunity of the said city, and be considered, to all intents and purposes, a free citizen thereof.

XXIV. *And be it enacted by the authority aforesaid,* That this act be, and it is hereby declared to be a public act, and that the same be, and shall forever hereafter be construed, in all courts and places, benignly and favourably, for every beneficial purpose therein intended.

Persons residing in the city four months, entitled to all the privileges of free citizens.

This act to be considered as a public act.

XXV. And whereas Thomas Jenkins, Seth Jenkins, David Lawrence, Hezekiah Dayton, Shubael Worth, Joseph Barnard, Ezra Reed, Charles Jenkins, Benjamin Folger, Reuben Folger, William Wall, Nathaniel Green, Samuel Mansfield, Cotton Gelston, John Thurston, William Minturn, Peleg Clark and Titus Morgan, have, by their humble petition, represented to the legislature, that they have at a considerable expence, purchased the tract of land formerly called the Claverack Landing, for the purpose of establishing a commercial settlement; and that they have built thereon several wharfs, and are about to build others, together with a ship-yard; and being apprehensive that the land under the water below high-water mark, might, at a future day, become the cause of dissensions and disputes, and from a desire to preserve good order and harmony among the citizens and inhabitants of this state, they have prayed the legislature for a grant of the said land from high-water mark, to the channel of the said river, opposite the land so purchased: And whereas the prayer of the said petition appears to be reasonable; *Be it therefore enacted by the authority aforesaid,* That the said Thomas Jenkins,

Grant of land under the water, made to the persons therein named.

Seth Jenkins, David Lawrence, Hezekiah Dayton, Shubael Worth, Joseph Barnard, Ezra Reed, Charles Jenkins, Benjamin Folger, Reuben Folger, William Wall, Nathaniel Green, Samuel Mansfield, Cotton Gelston, John Thurston, William Minturn, Peleg Clark and Titus Morgan, and each and every of them, have, hold, use, occupy, possess and enjoy, all, and all manner of right, title, interest, property, claim and demand whatsoever, of, in and to all the land lying under the water, and directly opposite to the tract of land so purchased by them as aforesaid, from high-water mark one hundred and eighty feet to the channel of the said river, in a course north fifty-seven degrees west, to the sole use, benefit and behoof of them the said Thomas Jenkins, Seth Jenkins, David Lawrence, Hezekiah Dayton, Shubael Worth, Joseph Barnard, Ezra Reed, Charles Jenkins, Benjamin Folger, Reuben Folger, William Wall, Nathaniel Green, Samuel Mansfield, Cotton Gelston, John Thurston, William Minturn, Peleg Clark and Titus Morgan, and to their heirs and assigns forever, in severalty. Provided always, That nothing in this act contained shall extend, or be construed to extend, or in any manner to affect, impede or interrupt the free navigation of the said river, or any public right or privilege heretofore held and enjoyed by the good people of this state, or the private right or privilege heretofore lawfully held and enjoyed by any citizen or citizens of this state.

LAWS of the State of NEW-YORK,

Passed in the Ninth Session of the Legislature, held at the City of New-York.

C H A P. VII.

An ACT for regulating Trials upon Writs of Right.

Passed 6th February, 1786.

WHEREAS formerly trials upon writs of right were by battle or the grand assise. And whereas the barbarous custom of trials by battle hath deservedly fallen into disuse, but hath never been abrogated by law. And whereas by the institution of the trial by the grand assise, four knights are to be summoned to elect the recognitors: And whereas there is not, nor cannot, by law, be any such order of men in this state;

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That* Trials by battle trials by battle in all cases shall be, and hereby are forever abolished.

In all writs for summoning electors, the words, Four good and lawful men of your county, to be inserted.

Qualifications of electors.

II. *And be it further enacted by the authority aforesaid,* That in all writs hereafter to be issued for summoning electors of the grand assise, instead of the words, Four lawful knights of your county, girt with swords, the words, Four good and lawful men of your county, shall be inserted. And that every of the said men to be summoned and returned to make election of the grand assise, shall always be

such as are or shall be duly qualified to vote for senators, according to the constitution of this state.

III. *And be it further enacted by the authority aforesaid,* That if either party shall have cause to challenge the electors so summoned and returned, or any of them, such challenge shall be taken and made upon their appearance, and before they be sworn to make election of the grand assise, and not after: and the justices shall thereupon proceed to try and determine such challenges, in such manner as challenges, in cases of common juries, are, by law, to be tried and determined. And if any such electors shall be found not duly qualified, or not indifferent between the parties, then a new writ shall be issued for summoning another, or others, as the case may require; and those who are not challenged, or found duly qualified and indifferent between the parties, as well as the parties, shall be adjourned over to the day of the return of such new writ. And when such four electors as shall not be challenged, or shall be found duly qualified and indifferent, shall appear, they shall be severally sworn, lawfully and truly to chuse, in the presence of the parties, in addition to themselves, twenty other good and lawful men of the county, who best know and will declare the truth between the parties, to make recognition of the grand assise; and every of the recognitors so to be chosen by the said four electors, shall always be such men as shall be duly qualified by the laws of this state, to serve as jurors upon trials at bar in the supreme court; and if either party shall

Qualifications of recognitors.

have cause to challenge any of the said recognitors, such challenge shall be taken and made before the said four electors, who shall immediately try and determine the same. And if any man named by the said four electors as a recognitor, shall be challenged, and found not duly qualified, or not indifferent between the parties, they shall leave his name out of the pannel, and chuse another in his stead, and when they have completed a pannel of twenty-four recognitors of themselves, and others as aforesaid, they shall, in their proper persons, return and deliver the same to the justices in open court.

IV. *And be it further enacted by the authority aforesaid,* That upon the delivery of such pannel into court, a writ shall issue to the proper officer, commanding him to cause the said recognitors to come before the justices, at a certain day and place, to make recognition of the grand assise between the parties: And if the cause is to be tried at the circuit court in any of the counties, a proper clause of nisi prius shall be inserted in such writ for the purpose; and when a sufficient number of the said recognitors shall appear to make the said recognition, such of them as do appear, shall be called and sworn as they stand upon the said pannel, until sixteen of them shall be sworn, who shall make the said recognition.

V. *And be it further enacted by the authority aforesaid,* That if a sufficient number of the said recognitors to make the said recognition, shall not appear at the return of the first process for summoning them, writs of distringas shall be issued against them, from time to time, until they shall appear.

VI. *And be it further enacted by the authority aforesaid,* That all trials upon writs of right, shall be had in the county where the tenements in demand shall be situated, unless the court upon motion of either party, shall order the trial to be at the bar of the supreme court.

C H A P. IX.

An ACT for the better levying and accounting for Fines, Forfeitures, Issues, Amerciaments, and Debts due to the People of this State.

Passed 9th February, 1786.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the junior justice of the supreme court of judicature of this State, for the time being, or in his absence one other of the puisne justices of the same court, shall and may, during every term of the said supreme court, or during such part thereof as may be necessary, in some convenient place near where the said supreme court shall than fit, hold a court for the hearing and determining of all causes, matters and things concerning fines, forfeitures, issues, amerciaments, and debts due to the people of this State, according to law, and the course of the exchequer. And that it shall

To cause process to be issued for levying fines forfeitures, issues, amerciaments, &c.

and may be lawful to and for such justice, to cause due process of law to be issued for the levying of all fines, forfeitures, issues and amerciaments, which have been, or hereafter may be set, laid, imposed, assessed, lost, or adjudged in any court of record of this State; and to cause all sheriffs, coroners, and other officers who have received, or hereafter shall or may receive any monies for any such fines, forfeitures, issues or amerciaments, duly to account for the same, and to examine, audit and settle such accounts; and to cause the sums which

shall appear or be found to be due thereon, to be duly paid; and to cause due process of law to be issued for recovering all monies upon recognizances forfeited, or to become forfeited to the people of this state: and to hear and determine all questions and matters concerning the same, and the forfeiture thereof; and upon good cause shewn, to remit any such forfeiture, or part thereof, and to discharge such recognizance according to equity and justice.

And further, That it shall and may be lawful to and for such justice, in all cases of difficulty, to adjourn the cause and matter, and deliver the record thereof into the supreme court, where the same shall be heard and determined; and then the said record shall be sent by the clerk of the said supreme court, to the said court so to be held before the junior, or other puisne justice of the said supreme court, in order that execution may be there done according to law.

Cases of difficulty to be adjourned into the supreme court.

II. *And be it further enacted by the authority aforesaid,*

That the justices of the supreme court for the time being, from time to time, when and as often as may be necessary, by rule or order, to be entered in the minutes of the same supreme court, shall nominate, and the chief justice of the

same supreme court, under his hand, and the seal of the same supreme court, commission an experienced and proper person to be clerk of the court so to be held, who shall be called the clerk of the exchequer in the supreme court, and shall hold his office during the pleasure of the justices of the said supreme court; and such clerk shall make and enter all such minutes, memorandums and records, and make and issue all such process, as such justice who shall hold such exchequer court shall, from time to time, direct. And shall receive and be accountable for all monies to be paid into the said court; and shall yearly on the first day of January term, in every year, make a just and true account, upon his oath, of all monies paid into the said exchequer court, and of all expences by him paid for stationary and other necessaries for the said office, and produce the same account to such justice as may then hold the same exchequer court, for his allowance and approbation thereof; and shall, within twenty days thereafter, deliver a true copy of such account so approved, to the treasurer of this state for the time being, and pay to the same treasurer, for the use of this state, the amount of such account, after deducting thereout the salary allowed to the said clerk, and the sums so allowed for necessaries as aforesaid, upon pain of forfeiting his office for any neglect of his duty therein, besides being answerable for the monies in his hands.

III. *And be it further enacted by the authority aforesaid,* That the justices of the supreme court for the time being, shall devise and cause to be made, a seal for the said exchequer court, upon which shall be engraved the words New-York Exchequer Seal, and shall deliver a description thereof in writing to the secretary of this state, to be deposited and recorded among the records of this state, and shall deliver the said seal to the clerk of the said exchequer court; who shall pay for the same out of the monies to be by him received as aforesaid. And further, That all process of the said exchequer court,

The process of this court how made and tested.

shall be made in the name of the people of the state of New-York, and be tested in the name of the junior justice of the supreme court for the time being, and signed by the clerk of the said court of exchequer, and sealed with the said seal so to be made: and shall be returnable as follows; That is to say, "Before one of our justices of our supreme court, in our court of exchequer," on such day as the said

court of exchequer may then be appointed to be held, "wheresoever the same court shall be then held."

IV. *And be it further enacted by the authority aforesaid,* That every such clerk so to be appointed, before he enters upon the execution of his office, shall take the oaths required by law, to be taken by ministerial officers; and shall be allowed and paid the yearly salary of, two hundred and fifty pounds, for his services; but shall not, upon any pretence whatsoever, have, receive, accept or take, any fees, perquisites or reward whatsoever, for any of the services by him to be performed in the execution of his said office.

V. *And be it further enacted by the authority aforesaid,* That no justice of the said supreme court, who may at any time hold the said court of exchequer, shall have, receive, accept or take, any fees perquisites or reward whatsoever, for any services by him to be performed by virtue of this act; his salary and fees, as justice of the supreme court, being considered as a full compensation for the services aforesaid.

VI. *And be it further enacted by the authority aforesaid,* That the respective clerks of every court of record in this state, shall yearly, on the first day of the term of July, in every year, make and deliver into the said court of exchequer, a just and true account and estreat of all fines, forfeitures, issues and amerciaments, set, laid, imposed, assessed, lost or adjudged, and of all recognizances forfeited before the first day of June, immediately preceding the first day of July term, on which such account shall be rendered, in and by the respective courts of which they are or shall be clerks, together with the said recognizances; noting in every such account and estreat, where any such fines, forfeitures, issues or amerciaments have been paid, or process issued, or the person committed for the same, to whom such payment or commitment was made, and what process has been issued, and to what officer; upon pain, that every clerk who shall neglect his duty therein, shall not only forfeit his office, but become and be answerable for all such fines, forfeitures issues and amerciaments, and the amount of all such recognizances, as such clerk shall neglect to give an account of, and estreat and deliver as aforesaid.

VII. *And be it further enacted by the authority aforesaid,* That all sheriffs, coroners and other officers, who have, or hereafter shall or may receive, or be accountable for and such fines, forfeitures, issues or amerciaments, shall ^{on April 1, 1794, at} yearly, on the first day of the term of July, in every year, ^{Ch. 16. Sec. 3.} render a just and true account thereof, on oath, to the said court of exchequer; and the same account being examined, audited and settled by the judge of the same court, shall pay the balance appearing or found due on such account, if any there be, in favour of the people of this state, to the clerk of the said court, and upon payment thereof, the said court of exchequer shall make and grant to such sheriff, coroner, or other officer, a quittance or discharge for the same, under the seal of the said court of exchequer. And if any such sheriff, coroner or other officer, shall not pay such balance so found due, within twenty days after the auditing of his account, execution shall be issued against him for the same; and if any such sheriff, coroner or other officer, shall refuse or neglect to make or render such account, such officer so neglecting or refusing, shall be liable to pay all such sums of money as shall be, or ought to have been, or might have been, received by him, for any such fines, forfeitures, issues, or amerciaments, as well as all such fines, forfeitures, issues and amerciaments, as shall have been set, laid, imposed, assessed, lost or adjudged, by or against, or upon such

officer so neglecting, or refusing, in any court of record in this state; and execution shall thereupon be issued against such officer for the same.

VIII. And be it further enacted by the authority aforesaid, That all suits in the said court of exchequer, shall be followed and prosecuted by the clerk of the said court, or the attorney-general of this state, and by no other person. And that all executions to be issued by the said court, shall be against the body, lands and goods of the debtor or defendant, commanding the officer to whom the said executions shall be directed, to cause to be made of the goods and chattels of such debtor or defendant, in his bailiwick, or county, the debt or sum of money in the said execution specified; and if sufficient goods and chattels of such debtor or defendant to satisfy such debt, shall not be found in the bailiwick or county of the officer, to whom such execution shall be directed, that then he diligently enquire, by the oath of good and lawful men of his bailiwick or county, what lands and tenements the same debtor or defendant hath, or was seised of in his said bailiwick or county, on the day such debt accrued, or such monies became due, which shall be particularly specified in such writ of execution; and that of all and singular those lands and tenements, in whose hands soever they may then be, he cause to be made the said debt specified in such execution; and that he take the body of the said debtor or defendant, and him in prison safely keep, until he shall fully satisfy the people of this state of the said debt. But where sufficient goods and chattels of such debtor or defendant shall be found to satisfy such debt, his land shall not be sold, nor his body taken in execution for the same debt. And when any such execution shall be issued against any sheriff, coroner, or other officer, while in office, or against any heir, executor or administrator, such execution shall not be against their bodies; but only against the lands, goods and chattels of such sheriff, coroner, or other officer, or the lands, goods and chattels of the ancestor, testator, or intestate, of such heir, executor, or administrator.

The clerk, previous to his entrance on office, to give a bond, with two sureties, in the sum of 2000l. for the faithful performance of his duty.

IX. And be it further enacted by the authority aforesaid, That the said clerk of the court of exchequer shall, before he enter upon the discharge of any of the duties directed to be performed by him in and by this act, give a bond with two sureties, to be approved by one of the judges of the supreme court, to the people of this state, in the sum of two thousand pounds, conditioned for the true and faithful performance of the duties of his said office, and shall file such bond in the office of the clerk of the supreme court.

C H A P. XI.

An ACT to raise a Fund for defraying the Damages done by Dogs, in the County of Richmond.

Passed 20th February, 1786.

WHEREAS many of the inhabitants within the county of Richmond, in the state of New-York, have sustained great losses, occasioned by dogs killing their sheep, without being able to obtain redress:

I. Be it enacted by the People of the State of New-York, represented in Senate, and Assembly, and it is hereby enacted by the authority of the same, That it shall and may be lawful for the collector, in each respective precinct and manor within the said county, once in every year, after the first day of May next,

during the continuance of this act, to demand and receive of and from all persons having the property in, or keeping any dog or dogs, of what kind soever, of three months old and upwards, the sum of two shillings for any dog kept by any one person or family, the sum of six shillings for the second dog, and the sum of twelve shillings for every dog above the number of two, to be kept as aforesaid.

II. *And be it enacted by the authority aforesaid,* That if any person or persons having property in, or keeping any dog or dogs, of what kind soever, as aforesaid, shall neglect or refuse to pay unto the collector of their respective precinct or manor, the sum or sums as aforesaid, twenty days after the same is demanded, it shall and may be lawful, and it is hereby made the duty of the collector of each respective precinct or manor, to commence and prosecute his or their action or actions, against any delinquent or delinquents, for the recovery of the same, with costs of suit, before any justice of the peace for the said county. And if any person or persons shall deny, that he, she, or they, have property in, or keep any dog or dogs, yet if it can be proved that such person or persons are in possession of, or suffer the same to remain about his or her house, twenty days before the demand made by the collector, he, she, or they, shall be deemed to be owner or owners of such dog or dogs, and liable to the payment of the aforesaid tax, to be recovered as above. And if any dog or dogs shall continue or keep about any person's house, twenty days, and no person appearing within that time to claim such dog or dogs, it shall and may be lawful for such person having such dog or dogs, about his house as aforesaid, to kill the same at any time after the said twenty days.

Persons having lost their sheep by dogs, to call in fence-viewers to ascertain the damage, and to certify the same to the supervisors, who shall pay the same.

III. *And be it further enacted by the authority aforesaid,* That when any person or persons within the said county, shall have sustained damages by dogs of any kind as aforesaid, it shall and may be lawful for him, her or them, to call in the persons who are or shall be appointed fence-viewers in each respective precinct of the said county for the time being, who reside next adjacent to the person or persons where the damage shall happen, who are hereby empowered to view the sheep so killed or hurt: And if it shall appear to their satisfaction, that they were killed by dogs only, then the said fence-viewers shall certify the same, with the true and real value of the sheep, or damage sustained, and the number killed or hurt, under their hands, which certificate shall be a sufficient voucher to the supervisors, for paying the value of the sheep or damage therein expressed.

IV. *And be it further enacted by the authority aforesaid,* That whenever sheep within the said county, shall hereafter be killed or hurt by any dog or dogs, and it can be proved whose dog or dogs it was that did the damage, if the owner or owners of such dog or dogs shall neglect or refuse to kill the same, and make satisfaction to the person or persons injured, after demand made, it shall and may be lawful for the person or persons so injured, to get the value of the sheep, or the damage certified by the aforesaid fence-viewers, and commence his, her, or their action or actions, against the owner or owners of such dog or dogs, before any justice of the peace of the said county, and recover the same, with costs of suit.

Dogs found worrying sheep, may be immediately killed.

V. *And be it further enacted by the authority aforesaid,* That if any person or persons shall find any dog or dogs worrying or killing any sheep, it shall and may be lawful

for them immediately to kill such dog or dogs; and if it shall be proved that such dog or dogs had before killed sheep, and the same came to the knowledge of the owner or possessor thereof, then, and in such case, it shall and may be lawful for the person or persons injured, to get the value of the sheep or damages certified, as above, and to commence his, her or their action for the recovery thereof as aforesaid.

VI. *And be it further enacted by the authority aforesaid,* That the collector or collectors of each respective precinct within the said county, shall keep a book, and therein enter the names of every person in his or their respective precincts or manors, keeping dogs, and the number thereof, with the tax or sums collected by virtue of this act, and shall pay the same into the hands of the county treasurer, to be disposed of by the supervisors, for the purposes above mentioned.

Collector to retain one shilling in the pound, for collecting tax.

VII. *And be it further enacted by the authority aforesaid,* That the collector or collectors of each respective precinct or manor within the said county, shall retain and keep in his and their hands, one shilling in the pound, for all sums by him or them collected and paid in pursuance of this act.

Collector neglecting his duty, to pay five pounds.

VIII. *And be it further enacted by the authority aforesaid,* That if either of the collectors of any of the precincts or manors within the said county, shall refuse or neglect to collect the taxes aforesaid, and do what is enjoined upon them by this act, he or they so offending, shall forfeit and pay the sum of five pounds, to be recovered by action of debt before any justice of the peace of the said county, with costs of suit, by any person or persons who will prosecute the same to effect, the one half to the prosecutor, and the other half to be applied to the uses aforesaid.

C H A P. XII.

An ACT to abolish Entails, to confirm Conveyances by Tenants in Tail, to regulate Descents, and to direct the Mode of Conveyances to Joint-Tenants.

Passed 23d February, 1786.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,*

Persons seized in fee tail, deemed seized in fee simple.

That all estates tail shall be, and are hereby abolished; and that in all cases where any person or persons now is, or are, or if the act herein after mentioned and repealed had not been passed, would now be seized in fee tail, of any lands, tenements or hereditaments, such person and persons shall be deemed to be seized of the same in fee simple absolute. And further, That in all cases where any person or persons would, if the said act and this present act had not been passed, at any time hereafter, become seized in fee tail, of any lands, tenements or hereditaments, by virtue of any devise, gift, grant, or other conveyance heretofore made, or hereafter to be made, or by any other means whatsoever, such person and persons, instead of becoming seized thereof in fee tail, shall be deemed and adjudged to become seized thereof in fee simple absolute.

Grants and conveyances by tenants in tail, deemed effectual.

II. *And be it further enacted by the authority aforesaid,* That where any lands, tenements or hereditaments heretofore have been devised, granted, or otherwise conveyed by a tenant in tail, and the person or persons to whom such

devise, grant, or other conveyance hath been made, his, her, or their heirs or assigns, have or hath, from the time such devise took effect, or from the time such grant or other conveyance was made, to the day of the passing of this act, been in the uninterrupted possession of such lands, tenements or hereditaments, and claiming and holding the same under or by virtue of such devise, grant, or other conveyance, then such devise, grant, or other conveyance, shall be deemed as good, legal and effectual, to all intents and purposes, as if such tenant in tail had, at the time of the making of such devise, grant or other conveyance, been seised of such lands, tenements or hereditaments in fee-simple; any law to the contrary hereof notwithstanding.

How inheritances shall descend in certain cases.

III. *And be it further enacted by the authority aforesaid,* That where any person shall die seised of any lands, tenements or hereditaments, without devising the same in due form of law, and leaving more than one person lawful issue, or without lawful issue, the inheritance shall hereafter, in the five several following cases, descend and go, as in each case is particularly specified; That is to say,

First. In case the person so seised shall leave several persons lawful issue, in the direct line of lineal descent, and all of equal degree of consanguinity to the person so seised, the inheritance shall then descend to the said several persons as tenants in common, in equal parts, however remote from the person so seised the common degree of consanguinity may be, in the same manner as if they were all daughters of the person so seised.

Secondly. In case the said person so seised shall die, leaving lawful issue of different degrees of consanguinity to him or her, the said person so seised, the inheritance shall descend to the lawful child or children of the said person so seised, if any or either of them be then living, and to the lawful issue of such of the children of the said person so seised, as shall be then dead, leaving lawful issue as tenants in common; such issue always to inherit, if one person solely, and if several persons as tenants in common, in equal parts, such share only as would have descended to his, her or their parent, if such parent had been then living; and each of the lawful children of the said person so seised, always to inherit such share as would have descended to him or her, if all the children of the said person so seised, who shall be then dead, leaving lawful issue, had been living at the time of the death of the said person so seised; and if there be no child of the said person so seised living, at the time of the death of the said person so seised, and only a grand child, or grand children, and the lawful issue of a grand child or grand children, who shall be then dead, leaving lawful issue, then the inheritance shall descend to such grand child or grand children of the person so seised, and to the lawful issue of such of the grand children of the said person so seised, as shall then be dead, leaving lawful issue as tenants in common; such issue always to inherit, if one person solely, and if several persons as tenants in common, in equal parts, such share only as would have descended to his, her or their parent, if such parent had been then living; and each of the grand children of the said person so seised, who shall be living at the time of the death of the person so seised, always to inherit such share as would have descended to him or her, if all the grand children of the said person so seised, who shall then be dead, leaving lawful issue, had been living at the time of the death of the said person so seised. And the same law of inheritance and descent, shall be observed in case of the death of the grand children, and other descendants to the remotest degree.

Inheritance of persons dying without issue, to go to the father, if living, unless it came from the mother.

Thirdly. In case the said person so seised shall die without lawful issue, leaving a father, then the inheritance shall go to the father of the said person so seised, in fee simple; unless the said inheritance came to the person so seised, from the part of his or her mother, in which case it shall descend, as if such person so seised had survived his or her father.

In case the father is dead, then to the brothers and sisters, as tenants in common.

And those of the half blood to inherit equally with those of the whole blood, unless the inheritance came from an ancestor.

Fourthly. In case the said person so seised shall, after the death of his or her father, die without lawful issue, leaving a brother or sister, or leaving a brother or brothers, and a sister or sisters, the inheritance shall descend to such brothers or sisters, or to such brother or brothers, and sister or sisters, as the case may be, as tenants in common in equal parts; and in such case every brother and sister of the half blood of the said person so seised, shall inherit equally with those of the whole blood; unless where such inheritance came to the said person so seised by descent, devise or gift, of some one of his or her ancestors, in which case all those who are not of the blood of such ancestor, shall be excluded from such inheritance. And,

Children of brothers and sisters to inherit the share of their parents.

Fifthly. In case any such brother or sister who would have inherited by this law, if living, shall die before the said person so seised, and leave a lawful child or children, such child or children surviving the said person so seised, shall inherit, if a child solely, and if children, as tenants in common in equal parts, such share as would have descended to his, her or their father or mother, if such father or mother had survived the said person so seised. And in all cases of descent, not particularly provided for by this act, the common law shall govern.

IV. *Provided always, and be it further enacted by the authority aforesaid,* That nothing herein contained shall be construed to bar or injure the right or estate of a husband, as tenant by the courtesy, or a widow's right of dower.

V. *And be it further enacted by the authority aforesaid,* That all posthumous children shall, in all cases whatsoever, inherit in like manner as if they were born in the life-time of their respective fathers.

VI. *And be it further enacted by the authority aforesaid,* That no estate in joint-tenancy in lands, tenements or hereditaments, shall be held or claimed by or under any grant, devise or conveyance whatsoever, hereafter to be made, other than to executors or trustees, unless the premises therein mentoined shall expressly be thereby declared to pass, not in tenancy in common, but in joint-tenancy, and every such estate, other than to executors or trustees, unless otherwise expressly declared as aforesaid, shall be deemed to be in tenancy in common; any law, custom or usage to the contrary notwithstanding.

VII. *And be it further enacted by the authority aforesaid,* That the act, entitled, † An act to abolish entails, to confirm conveyances by tenants in tail, to distribute estates real of intestates, to remedy defective conveyances to joint tenants, and directing the mode of such conveyances in future, passed the twelfth day of July, in the year of our lord one thousand seven hundred and eighty two, shall be, and hereby is repealed; but all descents and conveyances which have happened or been made since the passing of the said act, hereby repealed, shall take effect ac-

† 6th l. st. ch. 2. former act repealed.

cording to the said act, Provided always, That notwithstanding any thing in the said act contained, every grant, conveyance or devise heretofore made, or hereafter to be made to executors or trustees, shall be deemed to be in joint tenancy, and not in tenancy in common.

C H A P. XIII.

An ACT for Transcribing certain Records of Patents.

Passed 23d February, 1786.

WHEREAS certain of the records of patents in the office of the secretary of the state, are, by various accidents, so injured, that a frequent recourse to them may render them illegible; to prevent which,

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That the secretary of the state for the time being, shall transcribe, or cause to be transcribed, in his office, such of the said records of patents, as the said secretary, James Duane, Isaac Roosevelt, Samuel Jones and Richard Varick, Esquires, or a majority of them, shall deem necessary. And that such transcripts being compared with their originals, shall be certified by the said secretary to be true copies of the originals aforesaid.

II. *And be it further enacted by the authority aforesaid,* That the secretary, together with the persons herein before named, or a majority of them, shall cause to be re-bound, such of the books of records in the office of the said secretary, as to them shall appear to be necessary, and shall employ one or more person or persons for that purpose; and that the transcribing of the said records, as well as the binding to be done in pursuance of this act, shall be performed in the office of the secretary of the state, and in the presence of the said secretary, or of his own sworn deputy.

III. *And be it further enacted by the authority aforesaid,* That the secretary of the state shall be allowed for copying the said records, at and after the rate of one shilling and six-pence, for every one hundred and twenty-eight words.

IV. *And be it further enacted by the authority aforesaid,* That the treasurer of the state shall, and he is hereby authorised and directed to pay to the said secretary, such sum or sums of money as shall, from time to time, appear by accounts duly audited by the auditor of this state, to be due to him for his services and expenditures in pursuance of this act.

V. *And be it further enacted by the authority aforesaid,* That the secretary of this state shall, and he is hereby directed to report to the legislature, his progress in the execution of the duties by this act required, in order that further provision may be made for perpetuating the evidence arising from the said records.

C H A P. XIV.

An ACT to regulate the future Meetings of the Legislature.

Passed 13th March, 1786.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly; and it is hereby enacted by the authority of the same, That in case the person administering the government for the time being, shall not, on or after the first Monday of July, and before the first Tuesday in January, in any year, convene the legislature by proclamation, then the legislature

Legislature to meet first Tuesday in January every year, unless sooner convened by proclamation.

shall meet on the said first Tuesday in January, without any summons or notification whatsoever, at such place as the senate and assembly, at their meeting next preceding the said first Tuesday in January, shall have adjourned to; and in case there shall have been no such adjournment, or the senate and assembly shall not have adjourned to a place certain, then they shall convene on the said first Tuesday in January, at the place at which the last preceding meeting of the legislature was held.

C H A P. XVI.

An ACT to appoint the Place of holding the Supreme Court of Judicature of this State, in April Term, 1786.

Passed 21st March, 1786.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the supreme court of judicature of this state, to be held on the third Tuesday of April, one thousand seven hundred and eighty-six, shall be held at the city-hall of the city of New-York; any thing in the act, entitled, † 8th sess. ch. 61. **†** An act to appoint the place of holding the supreme court of judicature of this state in future, and to prolong the terms thereof, and for other purposes therein mentioned, to the contrary thereof notwithstanding.

II. *And be it further enacted by the authority aforesaid,* That all process issued out of the said supreme court, since January term last, shall be deemed to be returnable at the city of New-York, notwithstanding the same may have been made returnable at the city of Albany.

III. *And be it further enacted by the authority aforesaid,* That every sheriff, coroner and other officer, who by the act, entitled, † 9th sess. ch. 9. **†** An act for the better levying and accounting for fines, forfeitures, issues, amerciaments and debts due to the people of this, was to account for fines, issues or amerciaments by him received or to be received, yearly, on the first day of the term of July in every year, to the court of exchequer, may account to the said court of exchequer, on the first day of the term of April, yearly, in every year, or on the said first day of the term of July, at his option; any thing in the aforesaid act to the contrary notwithstanding.

C H A P. XIX.

An ACT for making Public Securities payable to the Bearer.

Passed 28th March, 1786.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That all notes, certificates or securities, given or issued in pursuance of any law of this state, and which are not negotiable, shall be, and hereby are declared to be negotiable after the passing of this act: and that the monies due, or to become due on any such notes, certificates or securities, and on any notes, certificates or securities originally issued and made assignable in pursuance of any law of this state, shall hereafter be payable to the bearer thereof; any thing contained in such notes, certificates or securities, or any law to the contrary in any wise notwithstanding.

C H A P. XX.

* 5th sess. ch. 21.
Continued,
11th sess. ch. 39.

*An ACT further to continue and amend an Act, entitled, * An Act for the Appointment of an Auditor, and the Settlement of the public Accounts of this State.*

Passed 28th March, 1786.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the act, entitled, An act for the appointment of an auditor, and the settlement of the public accounts of this state, shall be, and hereby is continued in full force and virtue, to all intents and purposes, until the 23d day of March, which will be in the year of our Lord one thousand seven hundred and eighty-eight.*

II. And be it further enacted by the authority aforesaid, That the said auditor shall be allowed for his services in that station, from the twenty-third day of March, in this present year, one thousand seven hundred and eighty-six, at and after the rate of three hundred and fifty pounds per annum, during the continuance of this act, to be paid in four equal quarterly payments.

Amended,
10th sess. ch. 76.
The auditor directed
to execute this act,
10th sess. ch. 99. sec.
11.

C H A P. XXIII.

An ACT for the Collection and Commutation of Quit-Rents.

Passed 1st April, 1786.

B*E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the Authority of the same, That in all cases where any person or persons, being citizens of this state, or of any of the United States, is or are, or shall be seized of any lands, or tenements in this state, charged with the payment of quit-rent, it shall and may be lawful to and for such person and persons, at any time on or before the first day of January next, to pay to the treasurer of this state for the time being, for the use of the people of the state, all the arrears of such quit-rent then due, in any [†] public securities receivable in payment on sales of confiscated estates, or in any other securities or certificates, issued or to be issued by the treasurer of this state, and at the same rate such securities and certificates are receivable in payment for confiscated estates; but no quit-rent which accrued between the 29th day of September, one thousand seven hundred and seventy-five, and the twenty-ninth day of September, one thousand seven hundred and eighty-three, shall be demanded or exacted from any such person or persons.*

II. And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for all and every person and persons, being citizens of this state, or of any of the United States, who is, are or shall be seized of any lands or tenements in this state, charged with an annual quit-rent, to commute for the same, by paying fourteen shillings for every shilling of such annual quit-rent, at any time on or before the first day of May, one thousand seven hundred and eighty-seven, in such public securities or certificates as aforesaid, to the treasurer of this state for the time being, for the use of the people of this state; and the said treasurer shall, upon such payment, give the person making such payment, a receipt or certificate, expressing the sum paid, the annual quit-rent in lieu or discharge of which the same is paid, and the land on which the same annual quit-rent was charged or reserved and

shall enter the same receipt or certificate in a book by him to be kept for that purpose, which receipt or certificate, or the entry thereof, shall be a good discharge of such quit-rent for ever.

III. *And be it further enacted by the authority aforesaid,* That where there are or shall be several owners or proprietors of any tract of land, chargeable with quit-rent, and which shall have been divided into as many shares as there were original proprietors in the grant, it shall and may be lawful to and for any original proprietor, or his or their legal representative, to pay the proportion of such share in manner directed in the first clause of this act, and

See 10th 1. st. ch. 76.
sec. 2.

to commute for the future quit-rents of such share, in manner directed by the second clause of this act. Provided, That such payment and commuting shall be on or before the first day of January next.

IV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for all and every person or persons, not being citizens of this state, or of any of the United States, who is or are seised of any lands or tenements in this state, charged with an annual quit-rent, to commute for the same, by paying fourteen shillings in gold or silver, for every shilling of such annual quit-rent, at any time on or before the first day of January, 1788, to the said treasurer, for the use of the people of this state; and the said treasurer shall give a like certificate, and enter the same as directed in the next preceding clause.

V. *And be it further enacted by the authority aforesaid,* That where in the grant or patent of any lands or tenements in this state, the reservation is in kind, and not in money, the value thereof shall be estimated according to the accounts of the receiver-general of the late colony, now state of New-York; and in cases where no such estimation has been had by the receiver-general, or that his books and accounts shall not be found, it shall and may be lawful for the treasurer of the state for the time being, to settle the accounts of such quit-rents, expressed in kind as aforesaid, according to equity and good conscience.

VI. *And be it further enacted by the authority aforesaid,* That all quit-rents now due, and to become due, from any person or persons not citizens of this state, or of any of the United States, shall be paid in gold or silver coin; and all quit-rents now due, and to become due from any person or persons being citizens of this state, or of any of the United States, and which shall not be paid on or before the said first day of January next, shall also be paid in gold or silver coin only.

VII. *And be it further enacted by the authority aforesaid,* That whenever there shall be three years quit-rent due, and in arrear upon any grant or patent for lands in this state, or upon any lands contained in such grant or patent, it shall and may be lawful for the treasurer of this state for the time being, and he is hereby required to give notice, in two or more of the public news-papers printed in this state (which public notice shall be so continued for three months at the least) that if the owners or proprietors of such lands do not, within twelve months after the date of such public notice, pay the arrears of quit-rent due for such lands, with the charge of such notices, to the treasurer of this state for the time being, then so much of the said lands will be sold at public vendue, as will pay the same, with the charges of such notices and sale. And such notice so to be given as aforesaid, shall express to whom the grant or patent was originally made; the date thereof, and the sum due thereby to the last day of payment preceding such notice, as far

as the same does appear from accounts of quit-rents, in the books of the said late receiver-general, or the accounts of the said treasurer; and upon the failure of payment of the said quit-rent, and charges of such notices as aforesaid, it shall and may be lawful for the treasurer of this state for the time being, and he is hereby required, by himself or his attorney, or the attorney-general of this state, to apply to the junior justice of the supreme court of judicature of this state for the time being, who is hereby authorized and required, as justice of the court of exchequer for this state, to cause an advertisement to be published in one of the public news-papers printed in the city of New-York, notifying all persons interested in such lands, to appear before him, on such day and at such place as he shall therein appoint, not less than thirty, nor more than forty days thereafter, to shew cause, if any he, she, or they, hath or have, why so much of the said lands shall not be sold, as will satisfy and pay the said quit-rent, with the charge of such notices: And in case no person shall appear at the time and place so appointed, either in person or by attorney, or if any person or persons shall appear at such time and place, the said justice shall hear the party or parties so appearing in a summary way; and shall thereupon certify under his hand, the sum due for quit-rent on the said lands, together with the charges of the said notices, and the process to issue thereon; and shall then issue process under his seal, directed to the sheriff of the county where the said lands lie, commanding such sheriff, within sixty days after the teste of such process (which shall be in the name of the people of this state, and tested in the name of the said justice on the day of the date of such certificate) to sell at public vendue, to the best bidder, so much of the said lands, as will pay the sum so certified to be due for quit-rent, and charges as aforesaid, and the further incidental charges thereon, and to pay the same monies so certified to be due for quit-rent and charges, to the treasurer of this state, within sixty days after such sale. And every such sheriff to whom any such process shall be directed, is hereby empowered and required, within six days after the receipt of such process, to cause advertisements to be affixed on the court-house, and three or more of the most public places in the county where the lands lie, that on such day (which shall not exceed fifty, nor be less than thirty days after the date of such advertisement) so much of the said lands will be sold at public vendue, at the said court-house, to the best bidder, as will pay the sum mentioned in the said process, and the charges of advertisement, sale, survey, and conveyance thereof. And upon the day appointed for such sale, as is before directed, the same sale shall be made at the court-house of the county in which the lands lie, between the hours of nine of the clock in the forenoon, and two of the clock in the afternoon; and at the time of such sale, such person or persons as will accept of the least quantity of land to pay the sum mentioned in the said process, and all charges which such sheriff shall then make a true account of, as far as can be then ascertained, shall be deemed the best bidder. And upon such sale, such sheriff shall cause such land so sold, to be surveyed, and shall then, upon the receipt of the purchase money, make, sign, seal and deliver deeds and conveyances thereof to the purchaser or purchasers thereof: which deeds and conveyances so made and executed, shall be, and are by virtue of this act, declared to be a good, valid and sufficient title, both in law and equity, to all intents and purposes whatsoever; and the purchaser and purchasers of lands by virtue of this act, and their respective heirs and assigns, shall be hereby severally vested in and entitled to an estate in fee simple, of, and in all and every part of the said lands, tenements and hereditaments so by

him, her or them purchased by virtue of this act. Provided always, That the lands so to be sold by virtue of, and in pursuance of this act, shall be surveyed and laid out in one entire piece, and at one side or end of the tract out of which the same shall be sold; and shall always be of the unimproved land, if there shall be so much thereof unimproved in one piece. Provided also, That in any county in which there shall not be a court-house at the time of such advertisement and sale, the advertisement shall be affixed, and the sale shall be at the place where the then last inferior court of common pleas was held. And provided further, That no such sale shall be made, until after the first day of January next.

No sale to be made before the 1st January 1787.

VIII. *And be it further enacted by the authority aforesaid,* That every sheriff to whom any such process shall be directed and delivered, shall, before he proceeds to execute the same, take an oath, to be administered to him in the words following, to wit:

YOU shall well, truly, faithfully and honestly discharge the trust reposed in you by virtue of an act, entitled, An act for the collection and commutation of quit-rents, according to the best of your skill and understanding.

Which oath any justice of the peace is hereby authorized and required to administer, and to give a certificate thereof to the said sheriff, who shall file the same with the clerk of the county in which the lands lie.

IX. *And be it further enacted by the authority aforesaid,* That the respective sheriffs to whom any such process shall be directed and delivered, shall, after the delivery of such deeds and conveyances as aforesaid, and within sixty days after such sale, pay to the treasurer of this state for the time being, the sum so certified by such justice of the supreme court, and mentioned in such process to be due for quit-rent on the said lands, and for charges as aforesaid. And it shall and may be lawful for such sheriff to retain for his own trouble, and the other charges attending such sale, so much as the justices of the peace of the same county where the lands lie, in their general sessions, shall allow and certify to be due for the same; and shall return the surplus of the monies, if any there be, to the person or persons to whom the lands so sold did belong immediately before such sale, or if he, she or they cannot be found, then such sheriff shall deliver such overplus monies to the said treasurer, who is hereby required to receive and apply the same, from time to time, to the payment of the quit-rent that shall become due thereafter from such person or persons; and the said sheriff shall, at the same time, deliver to the treasurer, a full and just account of the monies arising from such sale, and of the application of the same.

[The tenth and eleventh sections of this act are repealed, 10th sess. ch. 76. sec. 7.]

XII. *And be it further enacted by the authority aforesaid,* That no purchaser of forfeited estates shall be liable to pay quit-rents for any lands purchased, or to be purchased by him or her, but the same, and all the arrearages thereof, shall be, and are hereby forever remitted.

XIII. *And be it further enacted by the authority aforesaid,* That all quit-rents reserved in sterling money, shall be computed at and after the rate of one hundred and seventy-five pounds, lawful money of this state, for every one hundred

Quit-rents on forfeited estates forever remitted.

Quit-rents reserved in sterling, to be computed at 175 per cent.

Proclamation money to be considered as current money of this state.

pounds sterling money aforesaid; and that all quit-rents reserved in proclamation money, shall be considered as current money of this state.

[The fourteenth section of this act is repealed, toth sess. ch. 76. sec. 7.]

C H A P. XXIV.

Amended,
10th sess. ch. 54.

An ACT for Relief against absconding and absent Debtors.

Passed 4th April, 1786.

WHEREAS divers persons being indebted within this state, and having estates or effects in the same, with design to defraud their creditors of their just dues, do secretly depart the state, and procure their estates and effects, or the value thereof, to be remitted to them; or conceal themselves within the state, in order to elude the service of the ordinary process of the law, or to bring their creditors to an unreasonable composition: For remedy whereof,

I. Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That from and after the passing of this act, whensoever it shall happen

that any person or persons whomsoever, being indebted within this state, shall either secretly depart this state, or keep concealed within the same, any one creditor, or joint company, whose debt or demand is due to them jointly, to whom such absconding or concealed person or persons is or are indebted, in the sum of forty pounds, or upwards, or any two to whom he, she or they, is or are indebted, in the sum of sixty pounds, or upwards, or any three to whom he, she or they, is or are indebted, in the sum of eighty pounds, or upwards, over and above all discounts, may make application to the judges of the supreme court of this state, for the time being, or any one of them, and make affidavit or affirmation, in writing, in cases where by law an affirmation is allowed, that the said absconded or

concealed person or persons, is or are indebted to him, her or them in the sum of one of the sums herein before mentioned, or in any sum exceeding the said sum herein before mentioned, in any of the cases aforesaid, over and above all discounts; and that he, she or they, do verily believe, that the said absconding or concealed person or persons is or are, either departed the state, or concealed within it, with intent and design to defraud him, her or them, and other creditors, if any such there be, of their just dues, or to avoid being arrested by the ordinary process of

law; which departure or concealment shall also be proved to the satisfaction of such judge or judges, by two credible witnesses; and on such affidavit or affirmation, and such

other proof made, the said judge or judges, or any one of them, hereby is and are fully empowered, authorised and required, forthwith to issue his or their warrant or warrants, to the sheriff of the city or county which contains the last usual place of residence of such absconding or concealed person or persons, or to the sheriff or sheriffs of any or every other city or county within this state, commanding such sheriff or sheriffs respectively to attach, seize, take and safely keep, all the estate, as well real as personal, of the said absconding or concealed person or persons, of what kind or nature soever, and every or any part or parcel thereof, in whatever part of his bailiwick they can be found, with all evidences, books of accounts, vouch-

Such departure or concealment to be proved by two witnesses.

So in the original.

ers and papers relating thereto; which warrant or warrants the sheriff or sheriffs respectively, to whom the same shall be directed and delivered, are hereby required, well and truly to execute, and with the assistance of two substantial freeholders, forthwith to make a just and true inventory of all such estate and effects as he shall seize and take by virtue thereof, and to return the same, signed by himself and the said two freeholders, to such judge or judges who issued the warrant or warrants for taking and seizing thereof.

II. *And be it further enacted by the authority aforesaid,* That such judge or judges, who shall issue such warrant or warrants, shall, immediately thereafter, order notice to be given in two of the public news-papers printed in this state, one of which to be printed in the city of New-York, that on application to him or them made, by a creditor or creditors, as the case may be, of such absconding or concealed person or persons, he has directed all his, her or their estates, real and personal, within this state, to be seized; and that unless he, she or they, by name, so absconding or concealed, return and discharge his, her or their debt or debts, within three months after such public notice given, all his, her or their estates, real and personal, will be sold for the payment and satisfaction of his, her or their creditors.

III. *And be it further enacted by the authority aforesaid,* That in case any sheriff or sheriffs shall, by virtue of any warrant or warrants to be issued in pursuance of this act, seize and take any perishable goods or chattels, it shall and may be lawful for the judge or judges who issued such warrant or warrants, at his or their discretion, to order the sale of such perishable goods and chattels, and the monies arising thereby, to be delivered and paid to the trustees who shall be appointed in pursuance of the directions of this act.

IV. *And be it further enacted by the authority aforesaid,* That if any sheriff shall, by virtue of any warrant or warrants to be issued in pursuance of this act, through ignorance or want of proper information, seize and take any goods, chattels or effects, which shall or may be claimed or challenged by any person or persons, as his, her or their property, it shall and may be lawful for such sheriff thereupon to summon and swear a jury to enquire into, and try the right and property thereof; and if such jury shall, upon such inquest, find the right and property of such goods, chattels or effects, to be in the person or persons so claiming the same, or in any other than the person or persons against whose effects or estate such warrant or warrants did issue, such sheriff shall forthwith, after such inquisition had and taken, deliver such goods, chattels and effects, to the person or persons in whom the property thereof shall be so found, or to his, her or their agent, attorney or assigns; and such sheriff shall not be liable to any suit or prosecution, for his having seized and taken such goods, chattels or effects, so seized and taken through ignorance or want of proper information, and all reasonable charges arising by the sale of such perishable goods or chattels, or by such inquest as aforesaid, shall be allowed and certified by the judge or judges who issued such warrant, and paid out of the estate or effects of the absconding or concealed person or persons, against whose estate and effects such warrant issued, if the property of such goods, chattels or effects so claimed, shall, by such inquisition, be found to be in any other than the person or persons against whose estate or effects such warrant issued; but if the property of the goods, chattels or effects so claimed, shall, by such inquisition, be found to be in the person or persons against whose estate or effects such warrant of attachment did issue; then all costs, charges and expences, accrued or arising by such claim and inquisition, or

either of them, shall be paid by the person or persons who claimed the same, or applied for an inquisition to be had, or occasioned the same to be had and taken.

V. *And be it further enacted by the authority aforesaid,* That if any person or persons, indebted to any such absconding or concealed person or persons, or having the custody or possession of any effects, or other thing or things whatsoever, of any such absconding or concealed person or persons, shall, after such first public notice as aforesaid given, pay any debt or demands, or deliver any such effects, or other thing or things whatsoever, to any such absconding or concealed person or persons, or his, her or their attorney, agents, factors or assigns, the person or persons so paying any such debt or demand, or delivering such effects, or other thing or things whatsoever, shall be deemed to have paid or delivered the same fraudulently, and is and are hereby made liable to answer the same, or the amount or value thereof, to such trustees, or the survivor of them, as shall by virtue of this act be appointed to receive and distribute the estate and effects of such absconding or concealed person or persons, towards the payment and satisfaction of his, her or their creditors; and if any person or persons indebted to, or having the custody or possession of any effects, or other thing or things whatsoever, of any absconding or concealed debtor or debtors, shall, after such public notice as aforesaid given, be sued by him, her or them, or by his, her or their order, attorney or procurement, for any such debt or debts, duty, demand, effects, or thing, he, she or they so sued, may plead the general issue, and give this act and the special matter in evidence.

VI. *And be it further enacted by the authority aforesaid,* That all sales and conveyances of the estates, lands, goods, chattels or effects of such absconding or concealed person or persons, and all assignments of any promissory note, bill of exchange, security or chose in action, to him, her or them due or belonging, made by him, her or them, after such public notice as aforesaid given, and all letters of attorney by him, her or them, for selling any estate or effects, or collecting any debts or demands, whether made after or before such first public notice as aforesaid given, shall be null and void, to all intents, constructions and purposes whatsoever, as to all acts done or to be done after such first public notice given; any law, usage or custom to the contrary notwithstanding.

VII. *And be it further enacted by the authority aforesaid,* That if any person or persons, against whose estate or effects such warrant or warrants of attachment as aforesaid shall have issued, shall at any time before the appointment of trustees for all the creditors of such debtor or debtors, be made either by him, her or them, or by his, her or their attorney or agent, by petition, to the judge or judges who issued such warrant, offer to prove to the court of which he or they is or are judge or judges, in open court, that he, she or they, against whose estate or effects such warrant or warrants issued, is or are resident within this state, and were not, at the time such warrant issued, nor within thirty days preceding, nor at any time after, and is or are not then absconding or concealed, and thereby pray that the same may be heard and determined at the then next term of such court; and shall and do, at the same time, execute and deliver to the creditor or creditors who applied for and obtained such warrant or warrants of attachment, a bond with good and sufficient security, to be approved of by the said judge or judges, in the sum of forty pounds, binding the obligors jointly and severally with a condition, that if such person or persons by name, against whose estate or effects such

warrant or warrants issued, do not prove to the said court at the then next term, that he, she or they, is or are resident in this state, and were not at the time such warrant or warrants issued, nor within thirty days preceding the issuing thereof, nor at any time after, and is or are not then absconding or concealed, then such bond or obligation to be void, otherwise to remain in full force and virtue; then, and in every such case, the judge or judges who issued such warrant or warrants, shall report his or their proceedings in the premises, to the court whereof he or they is or are judge or judges, at the next term thereof; which court is hereby authorised and empowered to compel the parties and their witnesses to come into court, and hear the proofs and allegations of the parties and their witnesses in a summary way, and thereupon to determine whether the matters and things in such petition have been fully proved and supported: And if such court shall adjudge and determine that the matters and things contained in such petition, have been fully and satisfactorily proved and supported, then such court shall grant a superseas to such warrant or warrants, and the person or persons against whose estate or effects such warrant or warrants did issue, shall recover his, her or their costs, to be taxed by the said court in open court, of the creditor or creditors who procured such warrant or warrants of attachment to be issued: But if the said court shall judge and determine that the matters and things in such petition mentioned, have not been fully and satisfactorily supported and proved to the said court, then the person or persons to whom such bond as aforesaid, shall have been given, his, her or their executors or administrators, shall recover the penalty or sum of such bond, together with costs of suit, by action of debt, bill, plaint or otherwise, in any court of record within this state; the one moiety of such penalty or sum to the use of the obligee or obligees, his, her or their executors, administrators or assigns; and the other moiety thereof, when recovered and received to be paid to such trustees, or the survivor of them, as shall be appointed to manage and distribute the estate and effects, for seizing whereof such warrant or warrants issued; to be by such trustees, or the survivor of them, disposed of and distributed in like manner as all other monies that may come to their hands by virtue of their appointment as trustees, are directed to be disposed of by virtue of this act.

If such debtor do not return within three months, trustees to be appointed.

VIII. *And be it further enacted by the authority aforesaid,*

That if such absconding or concealed person or persons, do not return within three months next after such public notice as aforesaid given, and discharge his, her or their debt or debts, or otherwise compound with, or satisfy his, her or their creditors, not having presented such petition, and given such bond as aforesaid; or if such absconding or concealed person or persons shall have presented such petition, and the court shall have adjudged and determined that the matters and things in such petition mentioned, have not been fully and satisfactorily supported and proved, or shall have refused to grant a superseas to such warrant or warrants; that then, and in either such case it shall and may be lawful for the judge or judges, who issued the warrant of attachment, or the judges of the same court for the time being, or any one of them, to nominate and appoint three or more fit persons to be trustees for all the creditors of such absconding or concealed person or persons; which trustees shall take an oath or affirmation, as the case may be, well and truly to execute the trust by that appointment reposed in them, according to the best of their skill and understanding: Which oath or affirmation the judge or judges appointing the said trustees, is and are hereby required to administer.

IX. *And be it further enacted by the authority aforesaid,* That the said trustees, or any two of them, when so as aforesaid appointed, shall, as soon as may be thereafter, cause public notice to be given in two of the news-papers printed in this state, one of which to be printed in the city of New-York, of such their appointment, and thereby require all persons indebted to such absconding or concealed person or persons, by a day certain to be appointed by them, in their said notice, to pay all such sum or sums of money, or other debt, duty or thing which they owe to such absconding or concealed person or persons, and deliver all effects of such absconding or concealed person or persons, which he, she or they may have in his, her or their hands, power, or custody, to them the said trustees; and that the said trustees shall also, by public advertisement, in two of the said news-papers, desire all the creditors of such absconding or concealed person or persons, by a certain time in such advertisement to be mentioned, to deliver to the said trustees, or any one or more of them, their respective accounts and demands, against such absconding or concealed debtor or debtors.

X. *And be it further enacted by the authority aforesaid,* That such trustees, and each and every of them, when so nominated and appointed, under the hand and seal, or hands and seals of the said judges, or any one of them, hereby is and are fully authorized and empowered to take into their hands all the estate of such absconding or concealed person or persons, for the management of whose estate or effects they were appointed, and every part and parcel thereof, that shall have been seized as aforesaid, and all other his, her or their estate and effects, which they the said trustees may afterwards discover in any part of this state, and all evidences, books of accounts, vouchers and papers relating thereto; and such trustees, immediately after their appointment, shall be, and hereby are declared to be vested with all the estate, real and personal, of such absconding or concealed person or persons, for the management of whose estate they were appointed; and they, and the survivors and survivor of them, is and are hereby enabled and made capable to sue for, recover and receive all such estate, as well real as personal, debts, dues, effects, or other thing or things whatsoever, as they shall find due, payable or belonging to such absconding or concealed person or persons; and such sheriff or sheriffs as shall have seized, attached, or taken any estate, real or personal, or any other matter or thing whatsoever, by virtue of any such warrant or warrants as aforesaid, shall deliver the same to such trustees, or one of them; and such trustees, and the survivors and survivor of them, is and are hereby authorized and directed to make sale, by public vendue, of all such estates and effects of such absconding or concealed person or persons as shall come to their hands, after fourteen days notice of each time and place of sale respectively, and of all estate and interest which such absconding or concealed person or persons had in the same; and deeds and releases, bills of sale, or other conveyances for the same, or any part or parcel thereof, from time to time to make and execute; which being so made and executed by them, or any two of them, or the survivor of them, for such estates or effects, or any part or parts thereof, shall be, and are hereby declared to be as good, valid and effectual to transfer the property thereof, to all intents, constructions and purposes whatsoever, as if executed by the said absconding or concealed person or persons, before such public notice as aforesaid given.

XI. *And be it further enacted by the authority aforesaid,* That if any person or persons indebted to such absconding or concealed debtor or debtors, or having the custody of

Persons concealing debts due, or effects belonging to such

debtors to forfeit double the sum or value.

any goods, chattels or effects, or other thing or things whatever, of such absconding or concealed debtor or debtors, shall conceal the same, and not deliver a just account thereof to such trustees as aforesaid, or one of them, by the day for that purpose by them appointed, he, she or they, so concealing, or not delivering such account thereof, shall forfeit double the sum of the debt or debts, or double the value of the goods, chattels, effects, or other thing or things so concealed or not accounted for, to be recovered by the said trustees, in any court within this state having jurisdiction to the amount of such forfeiture, and applied as herein after directed: Which said court are hereby respectively fully empowered to compel to come before them all such person or persons who shall so conceal, or not account as aforesaid, and them to examine upon oath or affirmation touching the premises, and to commit them or either of them to prison, if they refuse to be so examined, or being so examined, refuse to answer fully and satisfactorily to such court.

XII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the trustees of any debtor or debtors estate, heretofore appointed by virtue of any of the laws of this state, or the late colony of New-York, relating to fraudulent or absconding debtors, or hereafter to be appointed by virtue of this act, or the survivors or survivor of them, or the major part of such survivors, to apply to any justice of the peace in this state, who is hereby, in such case, required to grant a warrant under his hand and seal, commanding such debtor or debtors, the wife or wives of such debtor or debtors respectively, and every other person whomsoever, known or suspected to detain any part of the estate of such debtor, or to be indebted to it, or knowing or suspected to know any thing concerning the concealment or embezzlement thereof, by their respective names forthwith to be brought before such justice and trustees, at such place as the said justice and trustees, or the major part of them, or the survivors or survivor of them, or the major part of such survivors, shall, at the time of the application for, or the issuing of such warrant, appoint, where the said justice of the peace is also hereby required and commanded to be present, or in case of his death, absence or indisposition, such other justice of the peace as the said trustees, or the major part of them, or the survivors or survivor of them, or the major part of such survivors, shall request to be present; at which meeting, as well the said justice of the peace as the said trustees, or the survivors or survivor of them, or the major part of such survivors, shall and may examine on oath, or if a person privileged by law to affirm, on his or her affirmation (which oath or affirmation the said justice of the peace is hereby required to administer) as well by word of mouth as on interrogatories in writing, all and every person or persons brought before the said justice and trustees by virtue of such warrant or warrants, and any other person or persons present at such meeting, touching all matters relative to the person, trade, dealings, debts, credits, estate or effects of all and every such debtor or debtors; and also to reduce to writing the answers of every such person had, given or taken before them as aforesaid; which examination, so reduced to writing, the person so examined shall and is hereby required to sign and subscribe; and in case any person so brought before them the said justice and trustees, or the survivors or survivor of them, or the major part of such survivors, shall refuse to be sworn, or if a person so privileged by law, to affirm as aforesaid, or being sworn or affirmed, shall refuse to answer, or shall not fully answer to the satisfaction of the said justice, all lawful ques-

tions put to him, her or them, by the said justice and trustees, or the major part of them then present, as well by word of mouth as by interrogatories in writing, or shall refuse to sign or subscribe his, her or their examination so taken down in writing as aforesaid, not having a reasonable objection either to the wording thereof or otherwise, to be allowed by the said justice; it shall and may be lawful for the said justice of the peace, and he is hereby required, by warrant under his hand and seal, to commit him, her or them, to prison, there to remain without bail or mainprize, until such time as such person or persons respectively shall submit to the said justice to be sworn or affirmed as aforesaid, and full answer to make to the satisfaction of the said justice, to all such questions as shall be put to him, her or them, as aforesaid, and to sign and subscribe such examination as aforesaid, according to the true intent and meaning of this act. Provided always, That in case any person or persons shall be committed as aforesaid, for refusing to be sworn or affirmed, or to answer, or for not fully answering any question or questions put to him, her or them, by the said justice and trustees, or the major part of them then present, by word of mouth or on interrogatories; that the said justice of the peace shall, in his warrant of commitment, specify such default respectively; and if the commitment be for refusing to answer any question or interrogatory, the said justice shall, in his warrant, specify such interrogatory or interrogatories, question or questions. Provided also, That in case any person or persons committed by such warrant or warrants by virtue of this act, shall bring any habeas corpus, in order to be discharged from any such commitment, and on the return of any such habeas corpus, there shall appear any insufficiency whatever in the form of the warrant whereby such person was committed, by reason whereof the party might be discharged of such commitment; that then it shall and may be lawful for the court, or judge before whom such party shall be brought by habeas corpus as aforesaid, and such court or judge shall, and is hereby required, by rule, order or warrant, to commit such person or persons to the same prison to which he was first committed, there to remain as aforesaid, unless it shall be made appear to such court or judge, by the party committed, that he, she or they have fully answered all lawful questions put to him, her or them, by the said justice and trustees that were then present, or the major part of them; or in case such person was committed for not signing his, her or their examination, unless it shall be made to appear to such court or judge, that the party so committed had a good and sufficient reason for refusing to sign the same; and in case any gaoler, or keeper of any prison or gaol, to whom any such person or persons shall be committed as aforesaid, shall wilfully suffer any such person or persons to escape from such prison, until he, she or they shall be duly discharged as aforesaid, such gaoler or keeper shall, for every such offence, first being duly convicted thereof on indictment or information, forfeit to the trustees appointed to manage and distribute the estate and effects of such absconding or concealed person or persons respectively, a sum equal to all such sum or sums of money as shall be due or owing to the creditor or creditors of such person or persons, such absconding or concealed person or persons, provided

Such forfeiture not to exceed 1000l.

the same does not exceed the sum of one thousand pounds; to be sued for and recovered by the said trustees, or the survivors or survivor of them, in any court of record within this state, and distributed as herein after directed,

XIII. *And be it further enacted by the authority aforesaid, That in case any person to be examined as aforesaid, either in court or before such jus-*

and trustees as aforesaid, shall wilfully and knowingly swear or affirm falsely, the person so offending shall be liable to the same pains and penalties as those who are convicted of wilful and corrupt perjury.

Persons discovering secreted effects, allowed ten per cent. on the value thereof.
 XIV. *And be it further enacted by the authority aforesaid,* That any person or persons (others than those who have the effects in their custody) who shall discover any effects of any absconding or concealed debtor or debtors, secreted contrary to the true intent and meaning of this act, so that they be recovered by the trustees of such absconding or concealed person or persons estates, shall be, and hereby is or are entitled to ten per cent. on the value of all effects so discovered, recovered and received by the said trustees, to be paid to the person or persons so discovering, by the said trustees, out of the estate or effects of such absconding or concealed debtor or debtors.

XV. *And be it further enacted by the authority aforesaid,* That the trustees of any absconding or concealed debtor's estate, already appointed in pursuance of any of the said laws of this state, or of the late colony of New-York, relating to absconding and fraudulent debtors, or hereafter to be appointed in pursuance of this act, or any two of them, are hereby fully empowered to settle and adjust all matters, contracts and accounts that may be subsisting between such absconding or concealed person or persons, and his, her or their debtor or debtors, and also between such absconding or concealed person or persons, and his, her or their creditor or creditors, and to examine any person or persons upon oath or affirmation, concerning any matters, accounts or settlements between them, or either of them; which oath or affirmation the said trustees, or any one of them, two of them being present, is and are hereby empowered to administer.

Trustees empowered to settle controversies by reference.
 XVI. And for the greater ease and relief of such trustees as aforesaid: *Be it further enacted by the authority aforesaid,* That in case any controversy shall arise concerning any debt, matter or thing, claimed by any creditor or creditors of such absconding or concealed person or persons, or concerning any debt, due, duty, matter or thing claimed by the said trustees, from or against any person or persons, as belonging to, or in right of the effects or estate of such absconding or concealed debtor or debtors, previous to such public notice as aforesaid first given, it shall and may be lawful for such trustees already appointed as aforesaid, or hereafter to be appointed in pursuance of this act, or any two of them, or the survivors or survivor of them, to have every such controversy determined in the following manner: That is to say, The said trustees, or any two of them, or the survivors or survivor of them, may nominate two referees, not being creditors of such absconding or concealed debtor or debtors, or to them known to be otherwise interested in such controversy, or related to any person interested in such controversy; and the other party or parties in such controversy shall also nominate two indifferent persons to be referees, and their names shall be separately written on four pieces of paper, as nearly as may be of the same size and figure, which shall be rolled up separately in the same manner, and put into a box, and from thence one of the trustees shall draw out three of the said pieces of paper, and the persons whose names are so drawn, shall finally settle such controversy; and if any referees so appointed, shall refuse, or be incapable of acting, in a reasonable time, a new choice shall be made, in like manner as before, of another or others, in the room of him or them so refusing, or being incapable of acting as aforesaid; and in case any person or persons who shall have any contro-

versy with any such trustees as aforesaid, shall refuse to nominate fit persons to be referees on his, her or their part, then such trustees, or any two of them, or the survivors or survivor of them, are hereby empowered to nominate referees for him, her or them so refusing, and to proceed to the final settlement of such controversy, in manner aforesaid.

Trustees to convert estates and effects of debtors into money, and to collect debts, &c.

XVII. *And be it further enacted by the authority aforesaid,* That all trustees hereafter to be appointed by virtue of this act, shall proceed to convert the estate, real and personal, of such absconding or concealed debtor or debtors, for the management of which estates respectively they shall be appointed, into money, and collect the debts due to the same; and that the said trustees, or any two of them, or the survivors or survivor of them, shall cause public notice to be given in two of the public news-papers printed in this state, one of which to be printed in the city of New-York, requesting a general meeting of all such creditors as shall chuse to attend, to examine and see the debts due to each person ascertained, at a certain time and place, by such trustees in their said notice to be appointed, which shall not be less than two, nor more than three months after such notice given, nor more than one year and an half from the time of their first appointment; at which meeting, or other subsequent meetings necessary for that purpose, to be continued by adjournment, if necessary, when all accounts are fairly stated and adjusted, they shall proceed to make a distribution or division amongst the creditors, in proportion to their respective just demands, of all such monies as shall have come to their hands as trustees of such estate or effects (of which all forfeitures by them recovered and received by virtue of this act, shall be considered as a part) first deducting thereout all legal charges and commissions; in which payments no preference shall be allowed to debts due on specialties: And if the whole of such absconding or concealed debtor or debtors estate shall not be then

No preference to debts on specialty.

settled and distributed, such trustees, or any two of them, or the survivors or survivor of them, shall, within the space of one year thereafter, make a second dividend of all such monies as shall have come to his or their hands after the first division; and so from year to year, until a final settlement thereof, and a just and equal distribution of such estate or effects shall have been made amongst the creditors of such absconding or concealed debtor or debtors, in proportion to their respective just demands; and if any surplus shall remain after all just debts and legal charges and commissions are fully paid and satisfied, such surplus shall be paid or delivered to the said absconding or concealed person or persons, his, her or their executors, administrators or assigns.

Any surplus remaining, to be paid to the debtor.

XVIII. *And be it further enacted by the authority aforesaid,* That any person or persons who may have given credit to any such absconding or concealed debtor or debtors, on a valuable consideration, for any sum of money, which shall not be due or payable at the time of any such division or distribution as aforesaid, but will become due or payable at some after time, shall and may, nevertheless, be admitted and considered as a creditor or creditors whose debts were then due, and shall receive a dividend of the estate of such absconding or concealed debtor or debtors, in the same proportion as other creditors, deducting thereout only a rebate of legal interest for what shall be received on such debt or debts, to be computed from the actual payment thereof, to the time such debt or demand respectively would have become

Creditors neglecting to deliver their accounts to the trustees, or to adjust or settle the same, excluded from any dividend until such settlement.

XIX. *And be it further enacted by the authority aforesaid,* That if any creditor or creditors shall neglect or refuse to give notice of, or deliver to the said trustees, an account of his, her or their debt or demand, or having any controversy relating to, or concerning the estate of such absconding or concealed debtor or debtors, shall refuse to adjust or settle

the same with the said trustees, in the manner in and by this act directed, until after a division shall have been made of the monies and effects in the hands of the said trustees, any such creditor or creditors shall not be entitled to any dividend, and the whole monies then in hand to be divided, shall be divided by the said trustees among the other creditors; but in case the whole of the estate of such debtor or debtors shall not be divided and settled at the first division, then, if such creditor or creditors respectively shall prove and deliver unto such trustees, an account of his, her or their debt or demand, before the time appointed for the second division, or shall have settled such controversy as aforesaid, with the said trustees, then such creditor or creditors shall have his, her or their first dividend, or so much money as he, she or they would otherwise have been entitled to, on the first division, before any second dividend shall be made.

Creditors residing out of this state, entitled to the benefit of this act.

XX. *And be it further enacted by the authority aforesaid,*

That any creditor or creditors residing out of this state, shall be entitled to all the privileges and benefits of this act; and that the attorney or attorneys of every such creditor or creditors residing out of this state, on producing a letter of attorney from such creditor or creditors, duly authenticated, and legal proof of the debt due, shall and may, in all respects, act, do, and proceed for and in behalf of such creditor or creditors, in the same manner as such creditor or creditors might or could do, for securing or recovering their respective debts from such absconding or concealed debtor or debtors, if such creditor or creditors was or were personally present.

XXI. And whereas persons who dwell out of this state, may be indebted within the same, and have estates or effects sufficient within the same to pay and satisfy such debts, or parts thereof; Therefore, *Be it further enacted by*

Estates of debtors residing out of this state, liable to seizure.

the authority aforesaid, That the estates, goods, chattels and effects, real and personal, of all and every such person and persons (so indebted) as do or may dwell or reside out of

this state, shall also be subject and liable to be taken, seized, proceeded against, sold, conveyed, and disposed of for the payment and satisfaction of such of the said debts as aforesaid, as near as may be, in like manner as the estates and effects of other debtors, in and by this act are made subject and liable to.

Provided always, That instead of the proof of absconding or concealment of such debtor or debtors, the creditor or

creditors applying for any attachment against the estate or effects of any person or persons residing out of this state, shall make proof by two witnesses, to the satisfaction of the judge or judges to whom application for such attachment shall be made, that such debtor or debtors reside out of this state: And also provided, That in any such case, no trustees shall be appointed until the expiration of one year after such public notice as aforesaid given.

XXII. *And be it further enacted by the authority aforesaid,* That if any person against whose estate or effects such warrant or warrants of attachment shall be issued, shall, at any time before the appointment of trustees in

Proof of non-residence to be made by two witnesses.

the manner aforesaid, in person, or by attorney or agent, apply to the judge who shall have issued such warrant or warrants, and give such security as such judge shall direct and approve, to the person or persons at whose instance such warrant or warrants issued, to appear and plead to any suit or action to be brought in any court of law or equity in this state, within six months thereafter, against the same person against whose estate or effects such warrant or warrants shall be issued, by the person or persons at whose instance such warrant or warrants issued, and pay all such sums as may be adjudged or decreed in any such suit or action; then, and in every such case, such judge shall issue a superseas to such warrant or warrants, and no farther proceedings shall be had thereon. And further, That in all cases where upon any such attachment or attachments, any ship or vessel, or any part thereof, shall be seised or attached, it shall be lawful for the judge who shall have issued such warrant or warrants, to cause such ship or vessel, or part thereof, so seised or attached, to be valued by indifferent persons; and if any person will give security, to be approved of by such judge, to the people of the state of New-York, for the benefit of the creditors of such debtor, to pay the amount of such valuation to the trustees to be in such case appointed, then such judge shall cause such ship or vessel to be discharged from such attachment.

First judges of county courts, and the mayor and recorder of New-York, authorized to put this act in execution.

XXIII. *And be it further enacted by the authority aforesaid,* That the first judge of the inferior court of common pleas in each county within this state, and the mayor and recorder of the city of New-York, and each and every of them is hereby authorized and empowered to put this act in execution in their respective counties. Provided always, That where warrants shall be issued by any judge or judges of the supreme court, and also by a first judge of any of the said inferior courts, or such mayor or recorder, against the estate or effects of the same person or persons; in such case, the judges of the supreme court, or any one of them, shall award a writ or writs of certiorari, to the judge of such inferior court, or mayor or recorder, as the case may require, to remove the proceedings there before the judge or judges of the supreme court, that he or they may proceed upon, both warrants, or either of them.

XXIV. *And be it further enacted by the authority aforesaid,* That the judge or judges, mayor or recorder who shall issue any warrant or warrants of attachment in pursuance of this act, shall make report to the court whereof he or they is or are judge or judges, of the proof of the debt or demand made by the creditor or creditors on whose application such warrant or warrants issued; of the issuing of such warrant or warrants; of the notice thereon ordered; of the publication of such notice; of the appointment of trustees; and of all other matters required of him or them by this act to be done out of court; and cause that report to be entered in the minutes of the said court, to be evidence of the facts so reported; and such report, or the record or entry thereof in the minutes of the said court, shall be full and conclusive evidence of the facts so reported in all courts of record within this state.

XXV. *And be it further enacted by the authority aforesaid,* That the judge or judges, mayor or recorder who shall make any such appointment of trustees, shall and is and are hereby required, at the request of the trustees thereby appointed, or any one of them, to endorse on such appointment an allowance that the same may be recorded; which allowance, signed by the said judges, mayor or recorder, or any one of them, if a judge of the sa-

preme court, shall be a sufficient warrant and authority to the secretary of this state, and to all or any of the clerks of the respective cities or counties within this state, to record the same; and if such judge be a judge of an inferior court of common pleas, or mayor or recorder, shall be a sufficient warrant and authority to the clerk of the court or county whereof he is a judge, to record the same; and any appointment of trustees under the hand and seal or hands and seals of any judge or judges, or mayor or recorder, authorized to put this act in execution, or the record thereof duly made in the said secretary's office, or in the office of the clerk of any city or county of this state, shall be full and conclusive proof in all courts and places within this state, that the person or persons against whose estate or effects such warrant or warrants issued, was or were, at the time of issuing thereof, either absent, absconding or concealed debtor or debtors within the meaning of this act; and that the said appointment, and the proceedings previous thereto, were regular, and according to the directions of this act.

XXVI. And whereas the affidavits or affirmations of the creditors whereon warrants of attachment have issued against concealed or absconding debtors, by virtue of sundry laws of this state relating to fraudulent and absconding debtors, and the warrants of attachment issued as aforesaid, and the sheriff's returns thereof, and inventories therewith returned, have usually remained with the judge or judges who issued the same, or one of them, and the appointments of trustees made in pursuance thereof, remained in the hands of the trustees appointed, or one of them, and by reason of the decease of such judges, and death or removal of such trustees, are many times lost or mislaid; by means whereof such persons as have or may purchase any messuages, lands, tenements or hereditaments which were of such absconding or concealed debtors, from or under any trustees for all the creditors of any concealed or absconding person or persons appointed as aforesaid, may be disabled to make out their rights and titles to the same, and such affidavits or affirmations, warrants of attachment or appointments of trustees, in case they can be found, are not at present of record, or filed in any public office of record, which may be of evil consequences to such purchasers as aforesaid, or persons claiming under them: For remedy whereof, *Be it further enacted by the authority aforesaid,* That any judge or judges, or mayor or recorder, who shall issue such warrant or warrants of attachments as aforesaid, pursuant to this act, shall, and he or they is and are hereby required and directed to cause the affidavits or affirmations of the creditor or creditors made before him or them previous to the issuing of such warrant or warrants respectively, within thirty days after the taking of such affidavit or affirmation, and such warrant or warrants of attachment as aforesaid, within thirty days after the return thereof, by such sheriff as shall return the same, together with the sheriff's return thereof, to be delivered into the office of the clerk of that court, whereof he or they is or are judge or judges; which clerk is hereby required and commanded to mark, or cause them to be marked respectively, with the day and year on which each of them respectively shall be filed in his office, and to preserve the same amongst the papers filed in such office. And all trustees hereafter to be appointed by virtue of this act, or the survivors or survivor of them, who by virtue of such appointment shall sell and convey any messuages, lands, tenements or hereditaments, shall cause such appointment of trustees to be duly proved or acknowledged and allowed, so that the same may be recorded, and shall cause the same to be entered of record either in the secretary's of-

office of this state, or in the office of the clerk of the city or county wherein such messuages, lands, tenements or hereditaments do lie; and every appointment of trustees for the estate of any fraudulent or absconding or concealed debtor, heretofore made by any judge or judges of the supreme court, or any of the inferior courts of common pleas, or by the mayor or recorder of the city of New-York, and every appointment of trustees hereafter to be made in pursuance of this act, or the record thereof made by such proper officer as aforesaid, or an office-copy thereof, attested by any such proper officer as aforesaid, in case such record should have perished by fire or other accident, together with a legal title or conveyance from such trustees, or any two of them, or the survivors or survivor of them, proved or to be proved in such due form as by law required, shall be a full, complete and perfect title for such messuages, lands, tenements or hereditaments, to such purchaser or purchasers, his, her or their heirs and assigns, against such absconding, absent or concealed debtor or debtors, his, her or their heirs or assigns, and all other persons claiming or to claim by, from or under him, her or them, by virtue of any act, deed, matter or thing, after such first public notice as aforesaid

Bona fide conveyances from trustees heretofore appointed, confirmed.

given; and all sales and conveyances of any messuages, lands, tenements or hereditaments, heretofore bona fide sold and conveyed by any trustees heretofore appointed by such judge or judges, mayor or recorder as aforesaid, for the management and distribution of the estate of any absconding or concealed debtor or debtors, are hereby confirmed and declared to be valid and effectual, to all intents and purposes, to such purchaser or purchasers, his, her and their heirs and assigns, against such absconding or concealed, or absent debtor or debtors, his, her or their heirs or assigns, or any person claiming or to claim by, from or under him, her or them, by virtue of any act, deed, matter or thing, after such first public notice as aforesaid given. Provided always, That such purchaser or purchasers, his, her or their heirs or assigns, now are, and have been, for the space of three years last past, in the actual possession of such messuages, lands, tenements or hereditaments.

If the purchaser now is and has been in the possession of such real estate for three years.

XXVII. *And be it further enacted by the authority aforesaid,* That such trustees as shall hereafter be appointed by virtue of this act, shall keep a regular book, or regular books of account of all such monies as shall come to their hands, by reason, or on account of such their appointment; to which book or books every creditor interested in such monies or estate, at all reasonable times, may have recourse; and that such trustees, and each of them, shall be subject to such orders and directions for the more effectual putting this act in execution, and finishing a distribution of such estate or effects as may come to their hands by virtue of such appointment, as shall, from time to time, be made and given in the court by the judge or judges whereof such appointment of trustees was made; and also that such trustees shall render unto the court, by the judge or judges whereof they were appointed, a just and true account or accounts in writing, upon oath, or if of the people called Quakers, affirmation, made in open court, of their proceedings and accounts in the premises, by virtue of their appointment, which shall be filed with the clerk of the said court, for the satisfaction of all persons concerned; and

Trustees to be allowed five per cent. for their trouble.

such trustees of the estate of any such absconding, absent or concealed person or persons, already appointed; or hereafter to be appointed, shall and may retain and keep in their hands, for the trouble and services to be by them performed, the sum of five

per cent. on the whole sum which shall come into their hands by virtue of such appointment, before each dividend made, over and above all necessary disbursements in the premises.

XXVIII. *And be it further enacted by the authority aforesaid,* That any judge or judges, mayor or recorder, who have issued any warrant or warrants, in pursuance and by virtue of any act or acts against absent, absconding or concealed debtors, may proceed thereon by virtue of this act; and that trustees appointed by any of the said acts, may exercise all the powers given by this act to such trustees, and shall be subject to such rules, orders and regulations, as in and by this act are appointed.

XXIX. *And be it further enacted by the authority aforesaid,* That if any person or persons shall be sued for any matter or thing done in pursuance or by virtue of this act, it shall and may be lawful for him, her or them, to plead the general issue, and give the special matter in evidence; and also that this act shall be beneficially construed for the creditors in all courts of record within this state.

XXX. And whereas, by the first section of the act, entitled, ^{† 7th sess. ch. 54.} *An act to amend an act, entitled, An act for relief against absconding and absent debtors, and to extend the remedy of the act, entitled, An act for granting a more effectual relief in cases of certain trespasses, and for other purposes therein mentioned, passed May the 4th, 1784, remedy was given to creditors against debtors, designated in the said first section of the said act, with authority to proceed against such debtors in manner as nearly as may be, as is prescribed and directed in and by an act, entitled, An act for relief against absconding and absent debtors, passed 3d day of April, 1775. And whereas the act last mentioned is expired by its own limitation; Be it therefore enacted by the authority aforesaid,* That all proceedings hereafter to be had against such debtors as are particularly described in and by the aforesaid first section of the act first aforesaid, shall, as nearly as may be, be in the manner prescribed and directed in and by this act.

C H A P. XXV.

An ACT to regulate the Militia.

Passed 4th April, 1786.

BE it enacted by the People of the State of New York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That every able-bodied male person, being a citizen of this state, or of any of the United States, and residing in this state (except such persons as are herein after excepted) and who are of the age of sixteen, and under the age of forty-five years, shall, by the captain or commanding officer of the beat in which such citizens shall reside, within four months after the passing of this act, be enrolled in the company of such beat: That every captain or commanding officer of a company, shall also enrol every citizen as aforesaid, who shall, from time to time, arrive at the age of sixteen years, or come to reside within his beat, and without delay notify such enrolment to such citizen so enrolled, by some non-commissioned officer of the company, who shall be a competent witness to prove such notice: That all disputes which may happen with respect to the age or ability of any person to bear arms, shall be determined by the captain or commanding officer of the company, with a right of appeal by the person who may conceive himself aggrieved, or by any other person be-

Amended,
10th sess. ch. 92.

Citizens of 16 and
under 45 years of
age, to be enrolled
by the captain of the
beat.

longing to the company, to the colonel or commanding officer of the regi-
 ment: That every citizen so enrolled and notified, shall, ^{Militia now to be}
 within three months thereafter, provide himself, at his own ^{armed and accounted}
 expence, with a good musket or firelock, a sufficient bayonet and belt, a
 pouch, with a box therein to contain not less than twenty-four cartridges
 suited to the bore of his musket or firelock, each cartridge containing a pro-
 per quantity of powder and ball, two spare flints, a blanket and knapsack;
 and shall appear so armed, accounted and provided, when called out to
 exercise or duty, as herein after directed, except that when called out to ex-
 ercise only, he may appear without blanket or knapsack: That the com-
 missioned officers shall be respectively armed with a sword or hanger, and an
 esponton: That the commander in chief for the time being, shall, by gene-
 ral orders, arrange the whole militia into commands, as nearly equal as con-
 veniently may be, of brigades, regiments and companies, and may, from
 time to time, alter such arrangements as he shall think proper; and that to
 each brigade of infantry there shall be one company of artillery, and one
 troop of horse: That each regiment of infantry shall consist of two batta-
 lions, each battalion to be composed of four companies, and each company of

One captain,	Four corporals,
One lieutenant,	One drummer,
One ensign,	One fifer,
Four serjeants,	

<sup>Serjeants, corporals,
drummers and fifers,
to be appointed by the
captain.</sup>

And not less than sixty five privates, as nearly as local cir-
 cumstances will admit: The serjeants, corporals, drum-
 mers and fifers to be, from time to time, appointed by the
 captain or commanding officers of the several companies:
 And if any non-commissioned officer to to be appointed, shall refuse to
 accept the office to which he shall be appointed, he shall forfeit the sum
 of forty shillings, to be adjudged, levied and disposed of as is herein af-
 ter directed, with respect to fines for neglecting or refusing to appear to
 exercise: That each regiment shall be commanded by three field officers,
 viz. One lieutenant colonel commandant, and two majors; and that to
 each regiment there shall be a regimental staff, to consist of

One adjutant,	} To rank as lieutenants.
One Quarter-master,	
And one pay-master,	
One surgeon, and	
One surgeon's mate.	

And that to each regiment there shall be two light-infantry companies,
 composed of such active young men as shall voluntarily engage in such in-
 fantry companies, and who shall form on the flanks of the regiment, and be
 clothed in such uniform as is herein after directed: That four regiments
 thus constituted, shall form a brigade, to be commanded by a brigadier-
 general, who may nominate his own brigade-major, which brigade-major
 shall rank as captain.

That each troop of horse shall consist of

One captain,	Four corporals,
One captain-lieutenant,	One saddler,
One lieutenant,	One farrier,
One cornet,	One trumpeter, and
Four serjeants,	Forty horsemen.

Each trooper to furnish himself with a serviceable horse, at least fourteen hands high, a good saddle, bridle, housings, holsters, breast-plate and crupper, a pair of boots and spurs, a pair of pistols, a sabre, a cartouch-box to contain twelve cartridges for his pistols; and that the commissioned officers shall be armed with a sword and pair of pistols, the holsters of which to be covered with bearskin caps.

That each company of artillery shall consist of

One captain	Six gunners
One captain-lieutenant,	Six bombardiers,
Three lieutenants,	One drummer,
Six serjeants,	One fifer, and
Six corporals,	Thirty-two matrosses.

Each commissioned officer shall be armed with a sword or hanger, a fuser, bayonet and belt, and cartridge box, to contain twelve cartridges, and each artillerist shall furnish himself, at his own expence, with all the equipments, of a private in the infantry, until proper ordnance and field artillery can be provided by the state; the drum and fife to be provided by the commissioned officers of the company: That each company of artillery

Artillery company,
and troops of horse,
to be formed of vol-
unteers.

and troop of horse shall be formed of volunteers from the district of the brigade, within which they reside, and shall be uniformly clothed in regimentals, to be furnished at their own expence, the colour and fashion of which to be determined by the brigadier commanding the brigade: That on every enlistment of a volunteer into the horse, artillery or light infantry, the captains of such troops or companies respectively, shall immediately certify the same to the captain of the beat from which such volunteer shall enlist: That each regiment shall be provided with state and regimental colours, at the expence of the field officers, and each company with a drum and fife, at the expence of its commissioned

Militia to rendez-
vous four times in a
year.

officers: That all the militia of the state shall rendezvous four times in every year, for the purpose of training, disciplining and improving in martial exercises twice by companies within their beats, once by regiments, and once by

† brigades; the time and place of rendezvous for the companies to be appointed by the colonel or commanding officer of the regiment, and arranged on different days, that the field and staff officers may have an opportunity of attending the several companies exercised in detail, in order to introduce uniformity in the manœuvres, and discipline of the regiment: That each commanding officer of a regiment shall appoint a regimental parade at some convenient place, as nearly central as may be, within the district of his regiment; and each brigadier-general shall appoint a brigade parade at some convenient place within the district of his brigade, as nearly central as may be; at which brigade parade such brigade shall rendezvous on such days as the commander in chief shall appoint by general orders; and which days shall be so arranged, that the adjutant-general may be enabled to visit and review them at their respective brigade parades: That there shall be an adjutant-general of the militia, whose duty shall be to distribute all orders from the commander in chief to the several corps, and once in every year review the brigades; to attend the respective brigades on their respective parades; and the regiment of infantry, and companies of artillery and cavalry, during the time of their being under arms, pursuant to this act; and shall inspect their arms, ammunition, accoutrements, and clothing; superintend their exercises and manœuvres, and introduce a system of military discipline throughout the state, agreeable to such orders as he shall

† Altered,
10th sess. ch. 92, sec. 2.

from time to time, receive from the commander in chief; to furnish blank forms of different returns that may be required, and explain the principles on which they shall be made; that within three weeks after he shall have finished his annual review, he shall deliver to the commander in chief, a return of all the militia of the state, reporting the actual situation of the arms, accoutrements and ammunition of the several corps, their delinquencies, and every other thing which in his judgment may relate to their police, and the general advancement of good order and military discipline; that he shall have the rank of lieutenant-colonel, and shall be allowed, as a full compensation for all the services he is required to perform by this act, at and after the rate of two hundred and fifty pounds for every year: That to every brigade there shall be an inspector, to rank as major, whose duty it shall be to attend the regimental parades, and shall then and there inspect their arms, ammunition, accoutrements and clothing; superintend their exercises and manœuvres, and introduce a proper system of military discipline throughout his brigade, agreeable to such orders as he may, from time to time, receive from the

Light-infantry companies, at the annual review, to be formed into a regiment.

Altered.
18th Feb. ch. 92. sec. 2.

adjutant-general: That at the annual brigade rendezvous, the light-infantry companies of the regiments composing the brigades, shall be formed into a regiment, to be commanded by such field officers as the commanding officer of the brigade shall appoint for that service: That when so embodied, they shall continue together at least four days, and perform such manœuvres and evolutions, under the direction of the adjutant-general, as he shall assign them: That the artillery company and troop of horse belonging to each brigade, shall, during such service, be attached to and remain with the regiment of light-infantry, and be subject to the orders of the commanding officer thereof: That every regimental commissioned officer shall report his acceptance of his appointment, within ten days from his receiving notice thereof, to the commanding officer of the regiment, who shall, in like manner, within ten days, make return thereof to his brigadier: The commissioned officers of cavalry and artillery shall also notify the acceptance of their appointments, within ten days after they have received notice, to their captains, and the captains shall make similar returns to their brigadiers within ten days: That a general court-martial shall consist of thirteen commissioned officers, who shall appoint their own judge-advocate; which judge-advocate shall tender to each member, and each member is hereby enjoined to take the following oath:

YOU do swear, That you will, well and truly try and determine, according to evidence, the matter now depending between the people of the state of New-York, and the prisoner or prisoners to be tried; and you do further swear, That you will not divulge the sentence of the court, until the same shall be approved of, pursuant to this act; neither will you, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof by a court of justice, in a due course of law. So help you God.

And the president is hereby authorized to tender to the judge-advocate, who is hereby enjoined to take following oath:

YOU do swear, That you will not, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a

witness, by a court of justice, in a due course of law; and that you will not divulge the sentence of this court, until the same shall be approved, pursuant to this act. So help you God.

Commissioned officers when convicted how to be punished. That every commissioned officer who shall be convicted by a general court-martial, of having refused or neglected to perform any of the duties of his office, shall be punished according to the nature and degree of his offence, at the discretion of the said court, either by fine or removal from his office. Provided, No fine shall exceed ten pounds for the first offence, or fifty pounds for any subsequent offence; which fine shall be levied and collected by warrant under the hand and seal of the commanding officer of the brigade, directed to any serjeant of the regiment to which such officer, on whom such fine is imposed, may belong, in like manner as the fines herein after mentioned to be recovered of non-commissioned officers and privates, for neglect or refusal of duty: That the commanding officer of a brigade may order courts-martial for the trial of offences within his brigade; the members of which shall be warned for that duty by the brigade-major, who is to keep a roster for that purpose: That the proceedings and sentence of every court-martial, by which any officer shall be removed from office, shall be in writing, signed by the president thereof; and that all proceedings and sentences shall, by the president, be delivered to the commanding officer of the brigade, to be by him transmitted to the commander in chief, who shall approve or disapprove of the same in orders; and that all other proceedings and sentences of brigade courts-martial, shall be delivered by the president thereof to the commanding officer of the brigade, who shall approve or disapprove of the same in orders: That a court-martial for the trial of general officers, shall be ordered by the commander in chief, and composed of general and field officers, who shall be warned to that duty by the adjutant-general, from a roster to be by him kept for that purpose: That the proceedings and sentences of such courts shall be transmitted by the presidents thereof, to the commander in chief, who shall confirm or disapprove of the same in general orders. Provided, That no sentence of a court-martial on a general officer, shall go farther than removal from office: That all sentences of courts-martial, by which any officer shall be removed, and which shall be approved by the commander in chief, shall, by him, from time to time, be laid before the council of appointment, to the end that the person administering the government of this state for the time being, by and with their advice and consent, may appoint others instead of the officers so removed from office: That every non-commissioned officer and private, who shall neglect to appear when warned in pursuance of this act, without sufficient excuse, shall, for every day he neglects to appear at the brigade rendezvous, forfeit the sum of twenty shillings, and shall, for every day he neglects to appear at the regimental or county parades, forfeit the sum of eight shillings; and if he shall not be armed and equipped according to the directions of this act, when so appearing, without sufficient excuse, he shall, for every deficiency, forfeit the sum of one shilling, and appearing without a musket, the sum of four shillings: That the commissions to be granted to officers of the militia, shall be numbered; and the officers of the same grade shall take [†] rank according to the numbers marked on their respective commissions; and when officers of different corps shall meet on duty, the rank of officers of the like grade shall be determined by

Commissions to be numbered, and officers to take rank according to such numbers.

† Altered, each sect. ch. 92. sec. 3.

ballot, by the commanding officer of the whole then present: That one
No brigade, regi-
ment or company,
entitled to rank. brigade, regiment, or company of foot (except the light in-

fantry companies herein before mentioned) shall not be con-
sidered as older, or having rank or preference of the other;
but each brigade, regiment, or company, shall be posted in the line, or on
command, as the commanding officer shall think proper: That all fines aris-
ing from offences in a company only, shall be adjudged of, and imposed by
the commissioned officers of the said company, or the major part of them;
and all fines to arise from offences on calling out the regiment or brigade, with
respect to the non-commissioned officers and privates, shall be adjudged and
inflicted by the major part of the field officers of the regiment, and shall be
levied, with costs, not exceeding three shillings, by warrant from the colonel
or commanding officer of the regiment, or captain, or commanding officer
of the company, as the case may be, directed to one or more serjeants, by
distress and sale of the goods and chattels of the offenders respectively: And
in case any such defaulter shall be under age, and live with his father or mo-
ther, or shall be then an apprentice or servant, the master or mistress, or father
or mother, as the case may be, shall be liable to pay the said fine, with costs;
and in default of payment, the said serjeant shall levy the same upon the
goods and chattels of such father or mother, master or mistress; such fines

To be paid into the
treasury of this state.

Altered,
10th sess. ch. 92. sec.
7.

City of New-York
to raise one regiment
of artillery.

when recovered, to be paid by the serjeant or serjeants, to
the officer granting such warrant, whose duty it shall be to
account for, and pay the same to the commanding officer
of the brigade; and such commanding officer shall pay the
same to the treasurer of this state: That the city and coun-
ty of New-York shall raise one regiment of artillery, to con-
sist of as many companies as the commander in chief shall
judge necessary, not to exceed four; which companies shall consist of the
same number of officers, non-commissioned officers, and matrosses, as the ar-
tillery companies herein before mentioned: That such regiment of artillery
shall have three field officers, shall be armed and accoutred in the same manner
as the other artillery companies mentioned in this act, until further provision
is made therein by law, and shall be called out to exercise, by orders from
the commander in chief, at least six times in every year, and be subject to the
same fines and penalties as are inflicted by this act for the neglect or refusal
to do duty, or being deficient in any arms or equipments.

Commander in chief,
in case of invasion,
may order out the
militia, &c.

II. *And be it further enacted by the authority aforesaid,*
That the commander in chief for the time being, may, in
case of invasion or other emergency, when he shall judge
it necessary, order out any proportion of the militia of the
state, to march to any part thereof, and continue as long as he may think
necessary; and likewise may, in consequence of an application from the
executive of any of the United States, on an invasion, or an apprehension of
an invasion of such state, at his discretion, order any number of the militia,
not exceeding one-third part thereof, to such state. Provided, That they be
not compelled to continue on duty out of this state more than forty days at
any one time: That while in actual service, in consequence of being so cal-
led out, they shall receive the same pay and rations, and be subject to the same
rules and regulations, as the troops of the United States of America.

Certain characters
exempted from mi-
litia duty.

III. *And be it further enacted by the authority aforesaid,*
That the lieutenant-governor, members and officers of
congress, and their servants not citizens of this state, mem-

bers of senate and assembly, the clerks of senate and assembly, the chancellor, chief justice and other justices of the supreme court, judge of the court of probates, and all other judicial officers, secretary, treasurer, attorney-general and auditor of this state, surveyor-general, registers of courts, sheriffs, coroners and gaolers, two ferrymen employed to each boat, and the surrogates in the several counties, all ministers or preachers of the gospel, physicians and surgeons, except in their respective professions and callings, the professors, tutors and students of Columbia college, post-officers and stage-drivers who are employed in conveying the mails of the post-office of the United States, all school-masters engaged for six months, the actual attendant of every grist-mill, and the fire-men of the cities of New-York and Albany, and of the township of Brooklyn, and twenty fire-men, to be from time to time appointed by the majority of the magistrates of the county of Albany, residing in the township of Schenectady, notwithstanding their being above sixteen and under forty-five years of age, shall be, and hereby are exempted from training or doing duty in the militia.

IV. *And be it further enacted by the authority aforesaid,*

Quakers, instead of duty, to pay 4 s. per annum.

That all persons, being of the people called Quakers, who would otherwise be subject to military duty, by virtue of this act, and who shall refuse personal military service, shall be exempted therefrom, on paying annually the sum of forty shillings each for such exemption; such sum to be assessed on each of them respectively by the assessors, and collected by the collectors of the districts wherein they respectively reside, with the contingent charges of the county, and paid to the county treasurer, who shall pay the same into the treasury of this state, to be applied towards the support of government; and it is hereby made the duty of every captain of infantry, within three months after he shall have received his commission, and yearly and every year thereafter, on the first Monday of June in every year, to make a list of the names of all and every person and persons within his beat, who being of the people called Quakers, shall neglect or refuse personally to perform military service, and deliver such list, in the city of New-York, to the clerk of the said city, and in each of the other counties of this state, to the supervisor of the town, precinct or district where such person or persons so neglecting or refusing to perform military service, shall respectively reside: And the clerk of the said city of New-York shall forthwith, after receiving such lists, deliver the same to the mayor, aldermen and commonalty of the said city, in common council convened: And the mayor, recorder and aldermen of the city of New-York, or any three of them, in the said city, and the supervisors, or major part of them, of each of the other counties of this state respectively, shall, at their first meeting after the delivery of such lists, cause tax-lists to be made out, according to such lists so delivered, with warrants thereon, under their hands and seals, directed to the collector of the ward, town, precinct or district in which such persons named in such lists, respectively reside, for levying the sum of forty shillings, of the goods and chattels of each of the persons named in the same lists: And the said collectors are hereby respectively authorised and required to demand and receive of each of the persons named in such tax-list, the said sum of forty shillings; and in default of payment, such collector shall levy the said sum of forty shillings, by distress and sale of the goods and chattels of the person so neglecting or refusing to pay the same; and in case any person named in such tax-list shall be under age, and live with his father or mother,

shall be then an apprentice or servant, the master or mistress, or father or mother as the case may be, shall be liable to pay the said sum of forty shillings for such person so under age; and in default of payment, the collector shall levy the same by distress, and the sale of the goods and chattels of such father or mother, master or mistress; and the said respective collectors shall respectively pay the said monies to the city or county treasurer, deducting their fees for collecting, on or before the first Monday in January in every year; and the county treasurers shall respectively pay the same to the treasurer of this state, deducting his fees for receiving the same, on or before the first Monday in March in every year: And the collectors and county treasurers shall have the like fees for collecting and receiving the said monies, as they are respectively entitled to for collecting and receiving the monies raised for defraying the necessary and contingent charges of the said city or counties.

[The 5th section of this act is repealed, 10th sess. ch. 92. sec. 4. and the 6th, 7th and 8th sections are thereby become obsolete.]

IX. *And be it further enacted by the authority aforesaid,* That the commander in chief shall, from time to time, arrange the militia in two divisions, as nearly equal as circumstances in his opinion will admit of.

X. And whereas from the great extent of the counties of Washington and Montgomery, some of the inhabitants would be subject to great expence and difficulty, if they were obliged to attend at regimental and brigade parades; *Be it therefore enacted by the authority aforesaid,* That it shall and may be lawful for the respective commanding officers of the militia in each of the said counties, to exempt such persons from attending regimental and brigade parades, as shall live at a greater distance than thirty miles from such parades aforesaid.

XI. And whereas, from the insular situation of the county of Richmond, it will be attended with much inconvenience and expence, if the militia thereof should be compelled, for the purpose of improving in military discipline, to attach themselves to the militia of any other county: Therefore

Be it further enacted by the authority aforesaid, That the militia of the said county of Richmond, shall be formed into one regiment, to consist of as many companies as the commander in chief shall judge necessary; which regiment shall meet four times in the year, in the manner, and during the periods which the other militia of this state are directed to meet; but such regiment shall be inspected in the said county, by such inspector of the militia of the city and county of New-York, as the commander in chief shall direct, and shall be attached to, and considered as part of the militia of the city, and county of New-York, and be subject to the immediate command of the senior brigadier of the said city and county, as part of his brigade.

Those persons in Washington & Montgomery, who live above 30 miles from the regimental and brigade parades, excused from attending.

Militia in Richmond to be formed into one regiment.

And considered as part of the militia of New-York.

XII. *And be it further enacted by the authority aforesaid,* That if a sufficient number of volunteers shall not offer themselves to compose the infantry companies of any regiment, it shall and may be lawful, from time to time, when a deficiency in the compliment of any such company shall arise, to and for the field officers of the regiment to cause a list to be made of all the young men enrolled in the district of such regiment, above the age of sixteen, and under the age of twenty-six years, and who shall not already have enlisted in the said infantry companies, and shall, by lot, determine which of

the said young men shall be compelled to attach themselves to the said companies of infantry.

XIII. And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any major-general, or commanding officer of a brigade, or commanding officer of a regiment, when, and as often as any invasion may happen, to order out the militia under their respective commands, for the defence of this state, giving notice of such invasion and every circumstance attending the same, as early as possible, to their immediate commanding officer, by whom such information shall be transmitted, with the utmost expedition, to the

Mode of ordering out the militia in times of invasion.

commander in chief: And that in cases of insurrections, the commanding officer of the regiment within the limits of which any such insurrection may happen, shall immediately assemble his regiment under arms, and having transmitted information thereof to the commanding officer of the brigade, and to the commander in chief, shall proceed to take such measures to suppress such insurrection, as to any three of the judges or justices of the county in which such insurrection shall happen, shall appear most proper and effectual: And if any person be wounded or disabled while in actual service, in opposing any invasion or insurrection, or in suppressing the same, he shall be taken care of, and provided for at the public expence, without having any regard to the rank such person may hold.

XIV. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the person administering the government of the state for the time being, by and with the advice and consent of the council of appointment, to appoint a commissary of military stores, who shall be allowed at and after the rate of forty pounds per annum; and such commissary shall have the charge and keeping of ordnance and military stores of the state, subject to such orders and instructions in the execution of his duty, as he shall receive from the commander in chief.

XV. And be it further enacted by the authority aforesaid, That every non-commissioned officer and private, who shall neglect or refuse to obey the orders of his superior officer while under arms, shall forfeit twenty shillings for every such offence; and if any such non-commissioned officer or private enrolled to serve in either of the companies of artillery, cavalry or infantry, shall refuse or neglect to perform such military duty or exercise as he shall be required to perform, or shall depart from his colours or guard without the permission of his superior officer as aforesaid, he shall forfeit the sum of twenty shillings; and for the non-payment thereof, the offender shall be committed, by warrant from the captain or commanding officer of the troop or company then present, to which such offender doth belong, to the next gaol, there to be confined until the fines as aforesaid, together with the gaoler's fees, are paid; and the respective sheriffs of the respective cities and counties of the state, are hereby empowered and required to receive the body or bodies of such offender or offenders, as shall be brought to them by virtue of a warrant or warrants under the hand and seal of such officer as aforesaid, and him or them to keep in safe custody, until such fines as are mentioned in such warrant, together with the gaoler's fees as aforesaid, shall be paid; and the sheriffs and gaolers respectively shall be allowed the same fees as are allowed in other cases. Provided, That in case of a military guard, where a captain doth not command in person, a warrant granted by an inferior officer, who

Penalty on non-commissioned officers and privates for neglecting or refusing to obey orders.

shall have the command of such guard, shall be of the same authority against all offenders, as if such warrant had been issued by such captain.

XVI. *And be it further enacted by the authority aforesaid,* That the military uniform of this state shall be as follows: That is to say,

General officers; Dark blue coats with buff facings, linings, collars and cuffs, and yellow buttons, with buff under-clothes.

Regimental officers of infantry; Dark blue coats with white linings, facings, collars and cuffs, and white buttons, with white under-clothes.

Non-commissioned officers and privates of infantry; Dark blue coats with white linings, collars and cuffs, and white under-clothes.

Staff officers; Dark blue coats with buff collars and linings, and yellow buttons.

Provided, That none of the non-commissioned officers and privates of the regiments of militia, except those composing the light-infantry companies directed to be formed by this act, shall be obliged to appear in uniform, in manner aforesaid.

XVII. *And be it further enacted by the authority aforesaid,* That all persons who have heretofore been commissioned officers in the line of the army of the United States, shall be, and hereby are exempted from serving in the militia of this state; any thing in this act to the contrary hereof notwithstanding. Former continental officers exempted from serving in the militia. See 10th sess. ch. 92. sec. 8. 11th sess. ch. 95. sec. 31. Provided nevertheless, That if any such officer,

being above the age of sixteen, and not more than forty-five years, shall be commissioned in the militia to a rank equal to that which he held in the said army, and shall refuse to accept such commission, such officer so refusing, shall be liable to serve in the militia.

XVIII. *And be it further enacted by the authority aforesaid,* That the commander in chief shall, as soon as may be after the passing of this act, take such measures as to him shall seem proper, to obtain the age, rank and residence of all officers who heretofore have served in the militia of this state, and the number of men between the age of sixteen and forty-five, directed to be enrolled by this act; and all executive officers within this state are hereby strictly enjoined and required to carry into execution such directions relative to the premises, as the commander in chief may, from time to time, give and enjoin.

XIX. *And be it further enacted by the authority aforesaid,* That all other laws of this state for regulating the militia thereof, shall be, and hereby are repealed. Former militia acts repealed. Provided always, That the act, entitled, An act to regulate the militia, passed the 4th of April, 1782, shall continue to be in full force and effect in the different counties of this state, until the militia of such counties shall be arranged and officered agreeable to the directions of this law, and no longer.

C H A P. XXVII.

An ACT for the Relief of Creditors against Heirs, Devisees, Executors and Administrators, and for proving Wills respecting real Estates.

Passed 4th April, 1786.

I. **B**E it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That

Creditors may maintain actions upon simple contracts or specialties, against heirs and devisees.

all and every creditor, whether by simple contract or specialty, and whether the heirs are mentioned therein or not, shall and may, by virtue of this act, have and maintain his, her and their action and actions, against the heir and heirs at law of any debtor who hath already died, or shall hereafter die intestate, seised of any manors, messuages, lands, tenements or hereditaments, and against the heir and heirs at law, and devisee and devisees of such debtor, in case such debtor made any last will and testament; and such heir and heirs, devisee and devisees, shall be liable and chargeable for a false plea, by him, her or them pleaded, in the same manner as any heir should have been for any false plea by him pleaded, in any action of debt upon specialty, or for not confessing the lands or tenements to him descended: And further, that all creditors shall be preferred as in actions against executors and administrators.

Heirs liable for the value of lands descended to them, after alienation.

II. *And be it further enacted by the authority aforesaid,* That in all cases where any heir or heirs at law, is, are or shall be liable to pay the debt of his, her or their ancestor, in regard of any lands, tenements or hereditaments, descending to him, her or them, and shall sell, alien or make over the same, before any action brought, or process sued out against him, her or them, such heir and heirs at law shall be answerable for such debt, to the value of the said lands so by him, her or them sold, aliened or made over; in which cases all creditors shall be preferred as in actions against executors and administrators; and such execution shall be taken out upon any judgment or judgments so obtained against such heir or heirs, to the value of the said land, as if the same were his, her or their own proper debt or debts; but the lands, tenements and hereditaments, bona fide, aliened before the action brought, shall not be liable to such execution.

Lands sold before actions brought, not liable to execution.

III. *Provided always, and be it further enacted by the authority aforesaid,* That where any action shall be brought against any heir or heirs, such heir and heirs may plead reins per descent at the time of the original writ brought, or the bill filed against him, her or them; any thing herein contained to the contrary notwithstanding: And the plaintiff in such action may reply, that such heir or heirs had lands, tenements or hereditaments from his, her or their ancestor, before the original writ brought or bill filed: and if upon issue joined thereupon it be found for the plaintiff, the jury shall enquire of the value of the lands, tenements or hereditaments so descended, and thereupon judgment shall be given and execution awarded as aforesaid: But if judgment be given against such heir or heirs, by confession of the action, without confessing the assets descended, or upon demurrer, or nihil dicit, it shall be for the debt and damages, without any writ, to enquire of the lands, tenements and hereditaments so descended.

IV. *Provided also, and be it further enacted by the authority aforesaid,* That all and every devisee and devisees made liable by his act, shall be liable and chargeable in the same manner as the heir and heirs at law, by force of this act, notwithstanding the lands, tenements and hereditaments to him or them devised, shall be aliened before the action brought, and shall and may, in all cases, plead the like pleas, and be liable to the like judgments and executions as the heir and heirs at law.

Devisees made liable in the same manner as heirs at law.

V. *And be it further enacted by the authority aforesaid,* That no lands or other real estate of any testator or intestate, shall be sold, or in any wise affected by virtue of any judgment or execution against executors or administrators.

VI. *And be it further enacted by the authority aforesaid,* That when any executor or administrator, whose testator or intestate hath died seised, or shall die seised of any real estate, shall discover or suspect that the personal estate of his, her or their testator or intestate, is insufficient to pay his or her debts, such executor or administrator shall, as soon as conveniently may be, make a just and true account of the said personal estate and debts, as far as he or she can discover the same, and deliver the said account to the judge of the court of probates of this state for the time being, and request his aid in the premises: And the said judge shall thereupon make an order, directing all persons interested in such estate, to appear before him at a certain day and place in the same order to be specified, not less than six weeks nor more than ten weeks after the day of making such order, to shew cause why so much of the real estate whereof such testator or intestate died seised, should not be sold, as will be sufficient to pay his or her debts; which order shall immediately thereafter be published for four weeks successively in two or more of the public newspapers printed in this state; and the judge of the court of probates for the time being shall, at the time and place specified in such order, or at such other time and place as he may then appoint, hear and examine the allegations and proofs of such executors or administrators, and of all such other persons interested in such estate, as shall think proper to make or offer any; and if upon due examination the said judge shall find that the personal estate of such testator or intestate is not sufficient to pay his or her debts, the said judge shall order and direct the whole, if necessary, or if not, so much of the real estate of such testator or intestate then remaining unsold, to be sold, as will pay his or her debts; and when only a part of the real estate is ordered to be sold, such order shall specify the amount so ordered to be sold. Provided always, That where any houses and lots are so circumstanced that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, the judge of probates, at his discretion, may order the whole, or a greater part thereof than is necessary to pay such debt or debts, to be sold, and to distribute the overplus money arising from such sale, to and among the heirs and devisees, as the case may be.

By which such sales and conveyances shall be made.

VII. *And be it further enacted by the authority aforesaid,* That all sales of any real estate, to be made by order of the judge of the court of probates, shall be made and conveyances for the same executed by the executors or administrators applying for such order, and such other person or persons as the said judge may think proper to appoint; and the conveyances for the same shall set forth such order, at large, and shall be good, valid and effectual against the heirs and devisees of such testator or intestate, and all claiming by, from or under them, or any of them.

VIII. *And be it further enacted by the authority aforesaid,* That where only a part of the real estate is ordered to be sold as aforesaid, the monies arising by such sale or sales, shall be received by the executors or administrators applying for such order, and shall be considered as assets in their hands, for the payment of debts; but where the whole real estate is ordered to be sold, the monies arising thereby shall be brought into the said court of probates; and if the same, after deducting all charges and expences shall not be

sufficient to pay all the debts of the testator or intestate, the said judge shall cause the same, after deducting all charges and expences, to be divided among the creditors, in proportion to their respective debts, without giving any preference to bonds, or other specialties. Provided always, That before the

Judge to give notice of such distribution.

judge of the court of probates makes any such distribution, he shall cause at least three months notice of the time and place of making the same to be given, by advertising the same in two or more of the public news-papers printed in this state, for six weeks successively. Pro-

No real estate to be sold until the personal estate is applied towards the payment of debts.

vided always, That no part of the real estate of any testator or intestate, shall be ordered to be sold as aforesaid, until the executors or administrators shall have applied the personal estate, or such part thereof as may have come to their hands, towards payment of the debts of such testator or intestate: And no more of the real estate shall be sold in any case, than may be necessary to pay the residue of the said debts. Provided also, That nothing herein contained shall be construed to prevent or bar any person from bringing or maintaining any suit or action against any executor or administrator, for or in respect of the personal estate of his or her testator or intestate, or for, or in respect of any waste or misapplication thereof by such executor or administrator.

Explication & amendment, 13th sect. ch. 51.

Wills of real estates to be proved and recorded in the courts of common pleas where such estates lie.

IX. *And be it further enacted by the authority aforesaid,* That in all cases where any real estate is or shall be devised by any last will or testament, it shall be lawful for the executors, or any other persons interested in such real estate, if they, or any of them shall think proper, to cause such last will and testament to be brought before the inferior court of common pleas, held in and for the county where such real estate is or shall be situated; and the said inferior court shall cause the witnesses to such last will and testament, to be examined before the same court, in open court; which examinations shall be reduced to writing; and if it shall appear to the same court, that such last will and testament was duly executed according to law, and that the person who executed the same, was, at the time of executing the same, of full age, and of sound mind and memory, and not under any restraint, than the said court shall order and direct the clerk of the same court to record such last will and testament, together with the proof thereof so taken in the said court, in a book to be provided by the said clerk for that purpose. And further, That if the lands or real estate so devised, are or shall be situated in several counties, then such last will and testament shall be proved in manner aforesaid, before the supreme court, and recorded as aforesaid by the clerk of the same supreme court.

Notice thereof to be given to the heirs, before the witnesses are examined.

X. *And be it further enacted by the authority aforesaid,* That neither the supreme court nor any of the said inferior courts, shall proceed to examine the witnesses to the execution of any last will and testament, unless it shall appear or be proved to such court, that due notice of such intention had been given to the heir or heirs of the testator; or if such heir or heirs are not to be found within this state, fixed up at the last place of abode of such testator, at least fifteen days before such examination.

XI. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said courts, and for each and every of the judges of the said courts, to cause the witnesses to all such last wills and testaments,

and all such other witnesses as any person interested may desire to be summoned, to appear before such court, to testify what they shall know concerning the premises: and if any such witness shall neglect or refuse to appear, the said court shall and may cause such witness to be brought before the same court, to be examined as a witness, touching the premises.

XII. *And be it further enacted by the authority aforesaid,* That every person, in whose custody or power any such last will and testament is or shall be, shall upon request, produce the same before such court as he or she may be required, for the purpose aforesaid, and when the same shall be proved and recorded as aforesaid, the original shall be returned to the person who brought it to the said court, if such person desire it. And further, That if any person in whose custody or power any last will or testament is or shall be, shall refuse to produce and deliver the same, then the said court, before which such person ought to produce the same, shall and may commit such person to the common goal, there to remain without bail or mainprize, until he or she shall produce and deliver such last will and testament to the same court, or to one of the judges thereof.

XIII. *And be it further enacted by the authority aforesaid,* That the records of the said wills so proved and recorded as aforesaid, shall be as good and effectual in all cases, as the original wills would be, if produced and proved.

XIV. *And be it further enacted by the authority aforesaid,* That the expence of proving and recording the said wills, shall be paid by the person applying to have the same done, and the witnesses and officers shall have the like fees for attendance and services in virtue of this act, as they are entitled to for the like attendance and services in other cases.

XV. *And be it further enacted by the authority aforesaid,* That the judge of the court of probates shall have and take for the services to be by him performed by virtue of this act, the following fees, to wit; For filing every petition, one shilling; for making and entering every order, six shillings; for every citation, under seal, to witnesses, or for any other purposes, six shillings; for every sentence, or decree, thirty shillings; for receiving and paying out all monies which may come into his hands in consequence of any sale by order of the said court, a commission of † three per cent. for copies of all records and proceedings, when required, for each sheet consisting of one hundred and twenty-eight words, one shilling and six-pence.

† Repealed 13th sess.
ch. 51. sec. 3.

C H A P. XL.

New bill emitted
as a substitute for
one emitted by this
act, 11th Feb. ch. 30.

An ACT for emitting the Sum of Two Hundred Thousand Pounds in Bills of Credit, for the Purposes therein mentioned.

Became a Law 18th April, 1786.

WHEREAS from the distresses occasioned by the late calamitous war, the inhabitants of this state labour under great difficulties for want of a sufficient circulating medium:

I. *Be it enacted by the People of the State of New-York, represented in Senate, and Assembly, and it is hereby enacted by the authority of the same,* That bills of credit, to the value of two hundred thousand pounds, current money of New-York, forthwith after the passing hereof, be printed, as follows, (viz.)

Six thousand bills, each of the value of ten pounds; four thousand bills, each of the value of five pounds; six thousand bills, each of the value of four pounds; ten thousand bills, each of the value of three pounds; ten thousand bills, each of the value of two pounds; twenty-four thousand bills, each of the value of one pound; twenty thousand bills, each of the value of ten shillings; and forty eight thousand bills, each of the value of five shillings: Upon which bills shall be impressed the arms of the state of New-York, on the right side of every of the said bills: and the said bills shall be in the words following:

BY a law of the state of New-York, this bill shall be received in all payments into the treasury, for New-York, the day of one thousand seven hundred and eighty-six.

Which bills shall be numbered by Evert Bancker, Henry Remsen, Jonathan Lawrence, John De Peyster and William Heyer, and signed by any two of them, and shall, by such signers, be delivered to the treasurer of this state.

II. *And be it further enacted by the authority aforesaid,* That the said signers are hereby directed and empowered, upon the delivery to them of the said bills, by the printer thereof, to administer to him, and he is hereby directed to take an oath in the words following:

I do solemnly swear and declare, That from the time the letters were set and fit to be put in the press, for printing the bills of credit now delivered by me to you, until the bills were printed, and the letters afterwards distributed into the boxes, I went at no time out of the room in which the said letters were, without locking them up, so as they could not be come at without violence, a false key, or other art unknown to me; and therefore, to the best of my knowledge, no copies were printed off but in my presence; and that all the blotters, and other papers whatsoever, impressed by the said letters, whilst set for printing the said bills, to the best of my knowledge, are here delivered to you, together with the stamps; and in all things relating to this affair, I have well and truly demeaned myself, according to the true intent and meaning of the law in that case made and provided, to the best of my knowledge and understanding. So help me God.

Which printer shall have a copy of this oath, at the time he gets orders to print the said bills, that he may govern himself accordingly. Provided always, That if any unforeseen accident happens, such printer may have liberty to make an exception thereof in such oath, declaring fully how such accident happened. And if any more of the said bills are printed than by this act is directed, when the said Evert Bancker, Henry Remsen, Jonathan Lawrence, John De Peyster and William Heyer, or any two of them, have signed the number hereby directed to be issued, they shall immediately destroy all the remainder.

III. *And be it enacted by the authority aforesaid,* That such person as the major part of the said signers of the said bills of credit shall agree with, shall engrave, according to the directions he shall receive from the majority of the said signers, so many stamps for the sides of the said bills, and for the arms of this state, as the majority of the said signers shall deem necessary, and shall deliver them to the treasurer, who shall, in the presence of the majority of the said signers, deliver them unto Samuel Loudon, printer, and take his receipt for the same: And when the said Samuel Loudon has finished and completed printing the bills hereby directed to be struck and issued, he shall

re-deliver the said stamps to the said signers, who are hereby directed and required to seal them up with their several seals, and to deliver them to the treasurer, who shall deposit the same in the treasury of this state, there to remain until they shall be ordered to be made use of by any future act of the legislature, and the receipt of the said treasurer to the said signers, shall be a sufficient discharge for such delivery; but in case of the death, sickness or inability of the said Samuel Loudon, to print the said bills, then the majority of the said signers shall appoint another printer for the service aforesaid, in his place; which printer so appointed, shall take the oath as above directed.

IV. *And be it enacted by the authority aforesaid,* That before the said signers do receive any of the said bills, they shall (before any of the magistrates of the city of New-York) respectively take an oath, or (if of the people called Quakers) affirmation, well and truly to perform what by this act they are enjoined as their duty; and that they will not knowingly sign more bills of credit than such as are directed by this act.

The treasurer to deliver the quotas to loan-officers of the several counties following.

V. *And be it further enacted by the authority aforesaid,* That the said treasurer shall, out of the bills of credit so signed and numbered as aforesaid, deliver to the loan-officers herein after mentioned; on producing the certificates of qualifications herein after directed, the sums and quotas following: to wit:

To the loan-officers of the county of New-York, to and for the purposes herein after mentioned, the sum of thirty-two thousand pounds.

To the loan-officers of the county of Albany, to and for the purposes herein after mentioned, the sum of twenty-two thousand pounds.

To the loan-officers of King's county, to and for the purposes herein after mentioned, the sum of four thousand five hundred pounds.

To the loan-officers of Queen's county, to and for the purposes herein after mentioned, the sum of eleven thousand five hundred pounds.

To the loan-officers of Suffolk county, to and for the purposes herein after mentioned, the sum of ten thousand pounds.

To the loan officers of Richmond county, to and for the purposes herein after mentioned, the sum of four thousand five hundred pounds.

To the loan-officers of Westchester county, to and for the purposes herein after mentioned, the sum of nine thousand five hundred pounds.

To the loan-officers of Dutchess county, to and for the purposes herein after mentioned, the sum of seventeen thousand pounds.

To the loan-officers of Orange county, to and for the purposes herein after mentioned, the sum of ten thousand pounds.

To the loan-officers of Ulster county, to and for the purposes herein after mentioned, the sum of fourteen thousand pounds.

To the loan-officers of Montgomery county, to and for the purposes herein after mentioned, the sum of twelve thousand pounds.

To the loan-officers of the county of Washington, to and for the purposes herein after mentioned, the sum of three thousand pounds.

For which respective sums the said loan-officers respectively shall give receipts to the said treasurer, indorsed on the clerk's certificate herein after directed; which receipts shall be to the said treasurer, his executors and administrators, a sufficient discharge, if otherwise he has well and truly performed the duty enjoined by this act.

VI. *And be it further enacted by the authority aforesaid,* That before the said loan-officers do respectively enter upon their said office, every of the

shall give bond to the people of the state of New-York, with such sufficient security as shall be approved of by one or more of the judges of the inferior court of the county, together with a majority of the supervisors of the same county, and in the city of New-York, by any one or more of the judges of the supreme court, signified by signing such his or their approbation on the back of the said bond, which bond shall be in the full sum by this act committed to his charge, with condition for the true and faithful performance of his office and duty, and that without favour, malice or partiality.

VII. *And be it further enacted by the authority aforesaid,* That each loan-officer respectively shall take the following oath, or if of the people called Quakers, affirmation, viz.

I will, according to the best of my skill and knowledge, faithfully, impartially and truly demean myself in discharge of the trust committed to me as one of the loan-officers for the _____ of _____ by the act, entitled, An act for emitting the sum of two hundred thousand pounds in bills of credit, for the purposes therein mentioned, according to the purport, true intent and meaning of the said act, so as the public may not be prejudiced by my consent, privity or procurement.

Which oath or affirmation shall be administered by any justice of the peace, and indorsed on the back of the said bond, and signed by such justice and the loan-officer.

VIII. *And be it further enacted by the authority aforesaid,* That the aforesaid bond, indorsed with the approbation and affidavit or affirmation aforesaid, shall be lodged with the clerk of the county, who, upon receipt thereof, shall give the loan-officer a certificate that such bond, indorsed as aforesaid, is lodged with him; which certificate shall be delivered to the said treasurer, on his delivering to the loan-officer the bills of credit aforesaid: Which bond and indorsements shall be recorded by the clerk; and in case of the forfeiture of the same bond, the majority of the supervisors, with any one or more of the judges of the inferior court of such county, are hereby empowered to order the same to be put in suit, and the monies recovered by virtue thereof, shall be applied to the use of the county.

IX. *And be it further enacted by the authority aforesaid,* That on the second Tuesday in May next, the judges of the inferior courts, or any one or more of them, together with the supervisors (or the majority of them) of the several counties respectively of this state, shall meet at the court-house of the counties respectively, or if there be no court-house in any county, at the place at which the inferior court of common pleas has been held in the term next preceding the passing this act; at which place the majority of them shall elect two sufficient freeholders of their respective counties, to be loan-officers for the same county, except in the county of Orange, in which county such meeting shall be at the court-house in the New-City.

X. *And be it further enacted by the authority aforesaid,* That the loan-officers of the several counties, when elected, appointed and qualified according to the directions of this act, shall respectively be bodies politic and corporate, in fact and in law, by the name and stile of the loan-officers of the county of _____ which they are respectively loan-officers, with full power to every the said bodies politic, to use a common seal, and by the same seal and in the name of such body politic, to grant receipts, receive mortgages, and again to grant the

The time and mode of electing the loan-officers.
See 9th sess. ch. 64.

Loan-officers to be bodies politic and corporate, &c.

same, to sue and be sued, and generally with all such powers as are necessary to be used for the due execution of the trust reposed in the said loan-officers by this act; any law, usage or custom to the contrary in any wise notwithstanding.

XI. And be it further enacted by the authority aforesaid, That when the said loan-officers respectively have qualified themselves, as by this act is directed, they shall receive the said bills of credit, signed by two of the said signers; which bills of credit, so signed, shall be let out to such as shall apply for the same, and can and will give security to the said loan-officers by mortgage on lands, lots or houses lying in the same county; they the said loan-officers first giving public notice (as in other cases is by this act directed for notices) and by advertisement, to be published in one of the news-papers printed in this state, that on a certain day, at least ten days after the said notice given, they will be ready to receive borrowers, qualified according to the directions of this act: And as on that day borrowers do offer, their names and sums they apply for shall be orderly entered in the minute-book of proceedings; and every one shall be served according to the priority of application, if there be no reasonable objections against the title and value of the lands offered to be mortgaged, or some other sufficient reason, which shall be entered also in the minute-book of proceedings. Provided always, That if, upon the first day, so many borrowers do offer, as to apply for a greater sum than the whole sum in that county to lent out; then, and in such case, every such borrower shall be abated of the sum applied for proportionably.

XII. And be it further enacted by the authority aforesaid, That the said loan-officers respectively, before they accept of any lands, lots or houses in mortgage for any of the said bills, shall first view what is so offered in mortgage, or make due enquiry respecting the value thereof, and shall examine the titles thereto, by perusing the deeds, patents, surveys and other writings and conveyances by which the same are held, and by which the value and quantity may be better known; and the said loan-officers respectively are hereby empowered and required to administer to all persons applying for any of the bills as aforesaid, the following oath, or (if of the people called Quakers) affirmation; to wit:

I am bona fide, seised in fee simple, of the lands, tenements and hereditaments by me now offered to be mortgaged, in my own right, and to my own use, and the same were not conveyed to me in trust, to borrow any sum or sums of money upon the same, for the use of any other person or persons whatsoever; and the said premises are free and clear from any other or former gift, grant, sale, mortgage, judgment, extent, recognizance, or other incumbrance whatsoever, to my knowledge.

XIII. And be it further enacted by the authority aforesaid, That the loan-officers of the said counties respectively, upon finding borrowers qualified, and the loan-officers being satisfied as aforesaid, are hereby required, and by virtue of this act have full power to lend out the bills delivered to them as aforesaid, at the interest of five per cent. per annum, for the term of fourteen years from the third Tuesday in June next to come, in sums not exceeding three hundred,

Loan-officers receiving the bills, to let them out on loan.

Loan-officers to ascertain the value of lands offered in mortgage.

Money to be lent at five per cent. per annum, for 14 years, after 2d Tuesday in June, 1786.

In sums not exceeding 300l. nor less than 20l.

Security in lands
to be double, and in
houses treble the va-
lue.

and not under twenty pounds (unless the proportion as aforesaid be less) to any one person, the said loan-officers taking security for the same by way of mortgage as aforesaid, of at least double the value in lands, tenements and hereditaments, and of at least three times the value in houses within the said respective counties, and administering an oath or affirmation to the borrower as aforesaid; and the said mortgage shall be executed before two or more witnesses signing thereto, and the substance thereof shall be minuted in a book to be by the said loan-officers kept for that purpose, in each respective county; for the making of which mortgage and minute the borrower shall pay to the said loan-officers the sum of four shillings, and no more; which mortgage and minute shall be, and each of them are hereby declared to be matter of record, and an attested copy of the said mortgage, if in being, or of the said minute, in case the said mortgage is lost, under the hands of the said loan-officers, and the seal of the loan-office, shall be good evidence of the said mortgage, in any court within this state.

XIV. And be it further enacted by the authority aforesaid,
Interest payable yearly. That the interest of the money lent out as aforesaid, shall be payable yearly, on the third Tuesday of June, to the
How the principal shall be paid. loan-officers; and the principals of all the monies lent out as aforesaid, shall be paid in again in the following manner: That is to say, One tenth part of the principal money on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-one; one other tenth part thereof, on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-two; one other tenth part thereof, on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-three; one other tenth part thereof, on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-four; one other tenth part thereof, on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-five; one other tenth part thereof, on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-six; one other tenth part thereof, on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-seven; one other tenth part thereof, on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-eight; one other tenth part thereof, on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-nine; and the remaining tenth part thereof, on the third Tuesday of June, which will be in the year of our Lord one thousand eight hundred. And the respective loan-officers, at the lending the money, are hereby required to take the security for the same accordingly; and the said loan-officers, for every sum paid to them, shall give to the person paying the same, a receipt, and shall enter one minute of the same payment on the book of the mortgage, and another minute thereof in the books of accounts by them to be kept, and that without any fee or reward; but if the borrower, his heirs, executors or administrators, shall see cause to pay in a fourth or half part, or three quarters, or the whole of the principal due, to the said loan-officers, on any third Tuesday of June, before the said third Tuesday of June, one thousand eight hundred, the said loan-officers are hereby required and empowered to receive the same on the said third Tuesday of June annually.

and no other day of the year, unless so many do offer payment on that day, and the said loan-officers cannot within the day receive the whole; and in that case, they are to continue to receive until all who on that day offered, have paid the monies so offered; or unless he brings along with him another sufficient borrower to give new security, to the satisfaction of the loan-officers for the whole of the money by him paid in; and in that case the loan-officer shall accept thereof on any of their stated days of meeting; and when the whole principal and interest is paid, the said loan-officers shall (if required) give the party paying, a release of the mortgage given by the borrower, and shall tear off the name and seal, and make an entry in the margin of the mortgage, and in the margin of the minute made thereof that on such a day and year, such release was made; for which release the releasee shall pay

Monies paid in before 1800, the loan-officers to advertise, and lend the same again.

Monies remaining in the loan-office, to be advertised at the end of every stated meeting.

† Altered.
13th Ed. ch. 29 sec. 4

the sum of two shillings, and no more; and when any parts of the principal are paid in as aforesaid, before the said third Tuesday of June, one thousand eight hundred, the loan-officers shall, at the end of that meeting, compute the whole of the principal so paid in, and give public notice of the amount thereof, by advertisements set up, and that they are ready to † lend the said monies to such persons as shall appear to be qualified according to the directions of this act, to borrow the same; and in the lending and taking security, shall conform themselves (as near as the circumstances of the case can admit) to the directions herein before prescribed; and if any monies shall remain in their hands for want of borrowers, they shall set up advertisements of the amount thereof, and continue to do the like at the end of every of their stated meetings.

XV. *And be it further enacted by the authority aforesaid,* That in case any loan-officer shall remove out of the county, die, or neglect or refuse to perform the duty required or enjoined him by this act, or shall behave himself in his office with favour, affection, partiality or malice, whereby the public or any private person may be injured; upon report or complaint made thereof, to any two or more of the judges aforesaid, of the county for which he is loan-officer, the said judges are hereby required and commanded by summons to convene the judges and supervisors of the same county, to meet at such time and place as in the said precept shall be appointed, to hear and determine summarily upon the said report or complaint; and upon sufficient proof made to any one or more of the said judges, with a major part of the said supervisors, of any death, removal, neglect or refusal in the said office as aforesaid; then, and in that case, the said majority of the supervisors, with concurrence of one or more of the judges aforesaid, shall proceed in manner as herein before directed, to elect, and are hereby required and commanded to elect a loan-officer in the room and stead of such deceased or absent person, or such person who shall have neglected or refused as aforesaid; which loan-officer so elected as aforesaid, having entered into bond, and been qualified in like manner as other loan-officers are by this act directed, shall then have all the powers, privileges and advantages, and shall be subject to all the penalties and forfeitures which any of the loan-officers of the county as aforesaid, are vested or charged with, entitled, or subject to by virtue of this act.

XVI. *And be it further enacted by the authority aforesaid,* That if any of the loan-officers hereafter to be elected, shall desire to be discharged of and from the said office, any one or more of the judges aforesaid shall and may, upon the application of such loan-officer for that purpose, issue his or their

precept to summon the judges aforesaid, and supervisors, to meet at a day and place in the said precept mentioned, to whom, when met, the said loan-officer shall produce or render an account of his proceedings in his said office; and if it appear, upon examination, to a majority of the said judges and supervisors, that the said loan-officer hath faithfully demeaned himself in the discharge of his office, according to the true intent and meaning of this act; then, and in such case, such loan-officer shall be discharged of and from his said office, and another fit person shall be by them elected to supply his place, who shall take the same oath or affirmation, give the like security, be subject to the like penalties, restrictions and regulations, and receive the same salaries and advantages as the other loan-officers for that county, by virtue of this act, are liable, subject, or entitled unto.

XVII. *And be it further enacted by the authority aforesaid,* That when a loan-officer shall be chosen and qualified as herein is directed, in the place of a former loan-officer, such former loan-officer, his executors or administrators shall, upon demand, deliver to the new loan-officer chosen in his place, and qualified as aforesaid, all the monies, books and papers, that were in such former loan-officer's custody, belonging to his office, upon oath, or if of the people called Quakers, on affirmation, before any justice of the peace; and in case any such former loan-officer, or his executors or administrators, shall delay or refuse to make such delivery on oath or affirmation, when demanded as aforesaid, the bond of such former loan-officer shall be forfeited.

XVIII. *And be it further enacted by the authority aforesaid,* That if any borrower shall neglect to bring in and pay, or cause to be brought in and paid, yearly and every year, on the third Tuesday in June, or within twenty-two days thereafter, on one of the days which the loan-officers aforesaid are by this act directed to attend the respective loan-offices, the yearly interest due by his mortgage, and also the part of the principal, as it becomes payable; then, and in either of these cases, the loan-officers to whom such mortgage was granted, shall be seised of an absolute, indefeasible estate in the lands, houses tenements and hereditaments thereby mortgaged to them, their successors and assigns, to the uses in this act mentioned; and the mortgagor, his or her heirs and assigns, shall be utterly foreclosed, and barred of all equity of redemption of the mortgaged premises; any law, usage or custom, or practice in courts of equity to the contrary notwithstanding.

XIX. *And be it further enacted by the authority aforesaid,* That the loan-officers shall respectively attend the loan-office every year, to receive the monies by this act directed to be paid to them upon the third Tuesday of June, and thereafter on the Tuesday in each week, for the term of three weeks.

XX. *And be it further enacted by the authority aforesaid,* That the loan-officers shall within eight days after the last of the Tuesdays aforesaid, yearly and every year, cause advertisements to be fixed at not less than three of the most public places, in three or more towns, precincts or districts of the county where the premises are situated, describing the quantity and situation of the lands mentioned in the said mortgage, and giving notice, that on the third Tuesday in September, in the same year, they are to be sold at the court-house of the respective counties where the lands lie, by way of public vendue, to the highest bidder.

XXI. *And be it further enacted by the authority aforesaid,* That the loan-officers of the respective counties aforesaid

The lands in foreclosed mortgages to be advertised for sale at vendue on the third Tuesday in September

Loan-officers to sell the lands at vendue,

and give conveyances
to the highest bidder.

Altered.

14th sess. ch. 40.

shall, on the said third Tuesday of September, yearly, expose the lands in the mortgages foreclosed as aforesaid, to sale at public vendue; and upon such sale, shall convey the said lands to the highest bidder or bidders; and the purchaser or purchasers shall and may hold and enjoy the same lands, for such estate as was conveyed to the said loan-officers, by the mortgage executed by such mortgagor, clearly discharged and freed from all benefit and equity of redemption, and all other incumbrances made and suffered after the execution of such mortgage by the mortgagor, his or her heirs or assigns; and such purchaser or purchasers shall pay the loan-officers for drawing and executing such conveyance, the sum of five shillings.

XXII. *And be it further enacted by the authority aforesaid,* That the money for which the premises are sold, shall, upon the sale thereof, be paid to the said loan-officers; out of which they shall retain in their hands, the amount of the principal then due, together with the interest which would have been due thereon on the third Tuesday of June next thereafter, if such sale had not been made; as also the expence of the advertisements, and of the sale; such expence not exceeding fifteen shillings; and the remainder (if any be) the loan-officers shall pay to the mortgagor, his or her heirs or assigns: Provided always, That if any person or persons offer at the time of the sale, to borrow (on sufficient security within this act) the whole principal that is to be retained out of the price, and lent out again, then, and in that case, the loan-officers shall not retain interest beyond the day of sale: Provided also, That if the purchaser incline to borrow the principal sum or sums that is or are to be paid by him, and lent out again, and if the loan-officers be satisfied with the security to be given by such purchaser, in manner aforesaid, such purchaser shall be preferred to any other borrower: Provided likewise, That the loan-officers shall not be obliged to take notice of any assigns of the mortgagor, unless they enter a notice of their right with the said loan-officers, at or before the time of sale; which notice the loan-officers shall enter on the mortgage and minute thereof, on demand; the assignee paying one shilling for the same; and assignees shall be preferred according to the priority of their entries of such notices.

XXIII. *And be it further enacted by the authority aforesaid,* That after any lands, houses, tenements or hereditaments are mortgaged, according to the directions of this act, if it shall appear to the loan-officers, upon good and sufficient grounds (which they shall insert in the minute-book of their proceedings) that the mortgagor had no good right or title to the premises mortgaged, or has otherwise broken the covenant of his mortgage, so that the public may be in danger of losing the monies, or any part thereof, advanced in loan upon the credit of the premises, it shall and may be lawful to and for the said loan-officers, and they are hereby empowered and required to commence an action or actions of debt or covenant upon the said mortgage, against the said mortgagor, his or her heirs, executors or administrators, and the same to prosecute to judgment, by all lawful ways and means whatsoever, in any court of record, for the recovery of the whole monies lent upon the mortgage, and the interest become due, and that shall become due, until the third Tuesday of June next following the judgement, with costs and charges; in which action or actions the mortgagor shall be held to special bail; and the court in which such action is brought, is, and the judges thereof in vacation, are hereby authorized and directed to give such short day for the rules of pleading thereon, that judgement or a trial and final determination

may be had the first court after the court at which the defendant first appeared to the same action.

[The 24th clause of this act is repealed, 11th sess. ch. 20. sec. 5.]

XXV. *And be it enacted by the authority aforesaid,* That the respective loan offices in this state, shall be kept at the court-house of each respective county, or at some other convenient place near the same, except that the loan-officers for the county of Orange shall meet alternately at Goshen, and at the New-City, in the said county, and their first meeting to be at the court-house in Goshen; and the said loan-officers shall, so soon as the said bills are signed and delivered to them, set up advertisements of the first day of their attending the loan-office for the purposes herein before mentioned, and shall duly attend the same on that first day, and on every Tuesday and Wednesday in each week, for the space of four weeks thereafter, if there be occasion of their sitting so long; and the said treasurer, so soon as he can fix the day upon which he can deliver the said bills to the loan-officers, shall send notice by letter to them to come and receive the bills at that day.

XXVI. *And be it further enacted by the authority aforesaid,* That the loan-officers respectively shall retain in their hands, so much of the interest monies paid in to them as will pay them their respective salaries appointed by this act; any thing in this act to the contrary notwithstanding; and the remainder of the said interest monies shall be annually paid to the treasurer of this state, on or before the last Tuesday of the month of August; and the said treasurer's receipt shall be to the said loan-officers, and every of them, their heirs, executors and administrators, a sufficient discharge.

XXVII. *And be it further enacted by the authority aforesaid.* That the yearly salary of the loan-officers aforesaid, for the services required of them by this act, shall be as follows; to wit:

For every of the loan-officers of the county of New-York,	forty pounds.
For every of the loan-officers of the county of Albany,	thirty pounds.
For every of the loan-officers of King's county,	ten pounds.
For every of the loan-officers of Queen's county,	sixteen pounds.
For every of the loan-officers of Suffolk county,	fifteen pounds.
For every of the loan-officers of Richmond county,	ten pounds.
For every of the loan-officers of Westchester county,	fifteen pounds.
For every of the loan-officers of Dutchess county,	twenty pounds.
For every of the loan-officers of Orange county,	fifteen pounds.
For every of the loan-officers of Ulster county,	eighteen pounds.
For every of the loan-officers of Montgomery county,	sixteen pounds.
For every of the loan-officers of Washington county,	ten pounds.

XXVIII. *And be it further enacted by the authority aforesaid,* That the supervisors and judges aforesaid of the several counties of this state, shall, on the first Tuesday in October, which will be in the year of our Lord one thousand seven hundred and eighty-seven, and yearly thereafter, on the first Tuesday in October, meet together with the said loan-officers at the court-house of the county; and the majority of the supervisors, with one or more of the judges aforesaid, shall carefully inspect and examine the mortgages, minutes and accounts of the loan-officers; and if it be found that any loan-officer or loan-officers has or have refused or neglected to perform the duties

enjoined upon him or them by this act, the said judges and supervisors shall elect a loan-officer or loan-officers, in the stead of such who shall so have refused or neglected as aforesaid; and if any deficiency has happened by borrowers not having right to the lands mortgaged, or by the selling thereof for a less price than what is before mentioned, or otherwise; then the said supervisors, or a majority of them, with the concurrence of one or more of the said judges, shall cause all such deficiencies to be assessed and levied in the county, as other county charges, so that the whole of such deficiencies be paid to the said loan-officers, by the third Tuesday of June then next following.

XXIX. *And be it further enacted by the authority aforesaid,* That in case one or more of the said judges, and a majority of the supervisors aforesaid, shall not meet on the second Tuesday in May next; or in case they shall not meet yearly on the first Tuesday in October; or in case they shall not meet when summoned by a precept of one or more of the said judges, for the several purposes in this act mentioned; every of them, in either of these cases, that are absent (unless detained by sickness) shall forfeit the sum of two pounds; and the judge or judges then attending, shall issue his or their precept to one or more constables, to summon the judges and supervisors to attend on that day week, for the purposes aforesaid, under double the penalty aforesaid, which each neglecting then to attend, if duly summoned, shall also forfeit although a sufficient number do appear; and in case a sufficient number do not then appear, the judge or judges appearing shall proceed in the like manner, from week to week, until a full number of supervisors do appear to perform the duty of which they before ought to have met: And in case the said supervisors, or either of them, when a majority of them are met, shall neglect or refuse to do the duty enjoined on him or them by this act, when met; or shall, on any pretence whatsoever, on the day of their annual meeting, neglect or omit the causing to be assessed, levied, and raised, the whole deficiencies that have happened by any of the means aforesaid, every of them neglecting their duty herein, shall forfeit to the people of this state, the sum of five pounds: All which penalties before in this clause mentioned, are to be recovered before any one of the justices of the peace within the county where such forfeiture shall arise; one half to the use of such judge or judges, and supervisors of the same county, endeavouring to perform their duty herein, who will sue and inform against the others, and prosecute their suit to effect; and the other half to the treasurer of the state, and be applied towards cancelling the bills of credit, in such manner as shall be directed by act or acts of the legislature.

XXX. *And be it further enacted by the authority aforesaid,* That all and every the sums of money which may at any time afterwards be recovered by the loan-officers aforesaid, of such persons as have been the occasion of such deficiencies as aforesaid, shall be applied to the use of such county; And the judge or judges and supervisors are hereby empowered to take all lawful ways and means, in the name of the said loan-officers, to recover the same.

XXXI. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said loan-officers to let out upon loan, any of the said bills of credit, in such manner as they shall think best, upon security of good plate, to be delivered to them at six shillings per ounce, to be paid to the said loan-officers on the third Tuesday in June, annually, then next, with a year's interest at five per

Loan-officers, to lend upon security of plate, at 6s. per ounce.

sent, for the same; and in case of non-payment at any of the three stated days of meeting of the loan-officers, then the said loan-officers are to sell the same plate in such manner, and upon the same day as they are directed to sell the lands of the mortgagors forfeited as aforesaid; and they are to return the overplus, if any be, to the owner, after payment of the principal and charges, with interest past and to come, until the third Tuesday of June then next, unless a borrower offers at the time of sale, as in case of lands herein before mentioned; any thing in this act to the contrary notwithstanding.

Bills remaining four weeks in the hands of the loan-officers, may be lent in sums above \$500.

XXXII. *And be it further enacted by the authority aforesaid,*

That if any monies shall remain in the hands of the loan-officers, for want of borrowers, four weeks after the first day appointed for letting it out, it shall be lawful for them to let out the same on good security, by mortgage of lands in the county, or on plate, as aforesaid, to any person who will borrow the same, in any sums though they be upwards of three hundred pounds.

XXXIII. *And be it further enacted by the authority aforesaid,* That if any of the bills of credit shall remain four weeks over and above the four weeks aforesaid; that is to say, in all eight weeks, in the hands of the loan-officers for want of borrowers, after the first day appointed for letting out as aforesaid, then, and in that case, the said loan-officers, or one of them, by consent of the other, to be entered and signed in the minute-book of proceedings, shall carry it to the loan-officers of the next county or counties, where there were more monies demanded in loan than there were monies to lend, and deliver it to the loan-officers of such next county or counties, upon their receipts for the same, and their entering a memorandum of it in the minutes of their proceedings; which loan-officers to whom such sum is brought, shall accept thereof, and shall set up advertisements thereof, and therein assign day in the next week for borrowers to offer, and shall proceed in the lending such further sum in their county, as nearly as circumstances will admit, in the like manner as they proceeded in lending the first sum; of which transposition of those monies, the loan-officers of the several counties shall give notice in writing, signed by them, to the treasurer, at the time of their paying to him the first interest monies thereafter; of which notice to him he shall enter memorandums in his book of accounts, the better to ascertain the interest he is to receive yearly from the respective counties, and the principal sums that the counties are finally to cancel.

XXXIV. *And to prevent frauds that may happen by executors, in their non-payment of any part of the money borrowed as aforesaid, by their respective testators; Be it further enacted by the authority aforesaid,* That if Where executors any person or persons who shall become a borrower or borrowers of the bills issued by virtue of this act, shall afterwards make his, her or their last will and testament, in due form of law, thereby devising the premises so mortgaged, to any other person or persons, leaving personal estate sufficient to pay his or her debts, with an overplus not otherwise in the said will disposed of, and not expressly provided in other manner by the said will, in such case it shall be understood, that the devisee intended that the mortgage-money in arrear at the time of his death, should be paid out of his personal estate, and his executor or executors accordingly be compelled to pay the same thereout, in aid of such debt or devisees; But in case the said last will was made before the premises so mortgaged, then it shall be understood that the testator's intent was (if otherwise expressed in such will) that the devisee or devisees should

pay the residue of the mortgage-money in arrear at the time of such testator's death : And in case any executor or executors, contrary to the intent of this act, having effects sufficient, shall permit a sale to be made of the premises mortgaged ; such devisee or devisees may immediately have his, her or their action, either in proper person or by guardian, or next friend, if under age, against such executor or executors, and recover double the damages sustained, with costs of suit ; and in case any executor or executors shall, in such case, be a purchaser of the premises so mortgaged, or any other in trust for him, or for his use, he or they shall be deemed seized of the premises for the use of the devisee or devisees ; and such executor or executors, and their trustee or trustees, are hereby disabled from making any conveyance thereof from such devisee or devisees ; and if any such conveyance is made, the same is hereby declared fraudulent and void against such devisee or devisees.

Swearing or affirm- ing falsely, or acting contrary to any oath or affirmation required by this act, declar- ed perjury. XXXV. *And be it further enacted by the authority aforesaid,* That if any person shall falsely swear or affirm in any of the cases where an oath or affirmation is required to be taken by this act, or shall wilfully or knowingly act contrary to the oath or affirmation he has before taken, such offence is hereby declared to be perjury, and the offender, being convicted thereof, shall suffer the pains and penalties of perjury.

XXXVI. *And be it further enacted by the authority aforesaid,* That the respective loan-officers within this state, for the time being, shall permit any person or persons, at seasonable times, to search and view the books of mortgages in their hands and custody, upon their paying one shilling for the search ; and the entry of the respective mortgages in the books of the said loan-offices, shall have the like priority, operation and effect, as if such mortgages were registered in the clerk's office of the county in which the lands mortgaged lie.

XXXVII. *And be it further enacted by the authority aforesaid,* That for the greater uniformity in the securities to be taken in the loan offices for the money to be lent by virtue of this act, the mortgages shall be in the form following, to wit :

The form of mortgages. **T**HIS INDENTURE, made the day of in the year of our Lord one thousand seven hundred and between of the county of blank of the one part, and the loan officers of the said county of of the other part, witnesseth, That the said for and in consideration of the sum of by the loan officers of the said county of to him well and truly paid, hath granted, bargained, sold, released, encoffed and confirmed, and by these presents doth grant, bargain, sell, release, encoff and confirm to the loan-officers of the of and their successors and assigns forever, All that

together with all and all manner of improvements, hereditaments and appurtenances whatsoever to the same belonging, or in any wise appertaining and all the estate, right, title, interest, claim and demand of the said to the above bargained premises, and every part thereof : To have and hold the above bargained premises, to the loan officers of the county of their successors and assigns forever, to the uses and purposes mentioned in an act of the legislature of the state of New-York, entitled, An act emitting the sum of two hundred thousand pounds in bills of credit, for the purposes therein mentioned : And the said

for himself, his heirs, executors and administrators, doth covenant, grant and agree to and with the said loan-officers of the _____ of _____ and their successors, that at and before the time of the enfealing and delivery hereof, the said _____ was lawfully seised of the above bargained premises, of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law, in fee simple, and that the same now are free and clear of all former and other gifts, grants, bargains, sales, leases, releases, judgments, extents, recognizances, dowers and other incumbrances whatsoever. Provided always, and these presents are upon this condition, That if the said heirs, executors, administrators, or assigns, do pay, or cause to be paid to the loan-officers of the _____ of _____ the interest at the rate of five per cent. of the said principal sum of _____ on the third Tuesday of June yearly, until the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety, inclusive; and if the said _____ heirs, executors, administrators or assigns, shall pay to the loan-officers of the _____ of _____ the one tenth part of the said principal sum of _____ on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-one, together with the interest then due on the said principal sum of _____ and one other tenth part of the said principal sum, on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-two, together with the interest then due; one other tenth part of the said principal sum, on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-three, together with the interest then due; one other tenth part of the said principal sum, on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-four, together with the interest then due; one other tenth part of the said principal sum, on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-five, together with the interest then due; one other tenth part of the said principal sum, on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-six, together with the interest then due; one other tenth part of the principal sum, on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-seven, together with the interest then due; one other tenth part of the said principal sum, on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-eight, together with the interest then due; one other tenth part of the said principal sum, on the third Tuesday of June, which will be in the year of our Lord one thousand seven hundred and ninety-nine, together with the interest then due; and the remainder of the said principal sum, on the third Tuesday of June, which will be in the year of our Lord one thousand eight hundred, together with the interest then due thereon, according to the true intent and meaning of the said act; then the above grant, bargain and sale, and every article and clause thereof, shall be void: But if failure be made in any of the payments above-mentioned, then the above bargain and sale, is to remain in full force and virtue. And the said _____ heirs and assigns, agree to be absolutely barred of all equity of redemption of the premises, at the expiration of twenty-two days after such failure. And the said _____ heirs, executors and administrators, _____ covenant, grant and agree to and with the loan-officers of the _____ of _____ and their successors, well and truly to pay to them, all and every of the sums of money above men-

tioned, at the times on which the same ought to be paid as aforesaid; and that the above bargained premises, upon the sale thereof, pursuant to the directions of the said act, will yield the principal and interest aforesaid, remaining unpaid at the time of such sale, and until the third Tuesday of June next after the day of sale, together with fifteen shillings for the charges of such sale: In witness whereof, the parties to these presents have interchangeably set their hands and seals, the day and first year above-written.

Scaled and delivered in the presence of

XXXVIII. *And be it further enacted by the authority aforesaid,* That the said Samuel Loudon shall print eight thousand copies of mort-
gages to be printed.

land copies of the said mortgages, and bind so many of them in a book together, with six leaves of clean paper for an alphabet, for the use of the loan-office of each county, that there may be a mortgage for every twenty pounds of bills of credit given to the loan-office of that county, and the number remaining he shall give in loose sheets, in the like proportion to each of the loan officers, in order therewith (if there should be occasion) to give attested copies of the original mortgages to the purchasers of any of the mortgaged lands; which books, together with the said loose sheets, are to be delivered by the printer, to the treasurer of this state, by him, with the bills, to be delivered to the loan-officers of each county.

XXXIX. *And be it further enacted by the authority aforesaid,* That no mortgage shall be taken in the loan-offices but by filling up one of the blanks of the said book of mortgages; none of them shall be defaced or torn out, except the seals when the mortgagor pays off the whole principal and interest of the mortgage: and the loan officers shall proceed in the taking the mortgages from the beginning of the book forward, numbering the mortgages as they are taken, and inserting the mortgagor's name and number in the alphabet, under the letter answering the mortgagor's first name.

XL. *And be it further enacted by the authority aforesaid,* That the printer shall also cause to be bound up, twelve books of paper; one for the use of each loan-office, and to be about two thirds of the size of the book of mortgages for the same county, to be delivered as aforesaid, with the book of mortgages.

XLI. *And be it further enacted by the authority aforesaid,* That the loan-officers shall, in one end of the last mentioned book, minute the substance of each mortgage, to wit: The number thereof, the date, the mortgagor's name, the sum lent, and the boundaries of the lands mortgaged: And when the one loan-officer has the custody of the book of mortgages, the other shall have the custody of the other book; that fire or other accidents, which might happen, may be guarded against. And the printer shall make an alphabet to it, like to that of the book of mortgages; and for the satisfaction of the mortgagor, he may examine or see the minutes examined with the original mortgage, and with the witnesses, shall sign the same.

XLII. *And be it further enacted by the authority aforesaid,*
Directions to the That the loan-officers, beginning at the other end of the
loan-officers. said book, shall insert the minutes of their proceedings therein, to wit:

First. The day they meet, place, house, and loan-officers present.

Second. If any one is absent, they shall, at their next meeting, minute the cause of his absence.

Third, Shall enter the hour that every one applies for the loan of money, and the sum he applies for.

Fourth. Shall enter down the reason why a prior applicant had not the money, according to his application, and the substance of examination for clearing titles and values.

Fifth. Shall enter down the monies received from the treasurer, and the monies delivered to, or received from the loan-officers of another county, and the day when, with a copy of the notice thereof, to be delivered to the treasurer, and when that notice was delivered to the treasurer, and by whom.

Sixth. The last day of their four days of meeting for receiving of monies yearly, they shall enter whose mortgages are foreclosed, and the numbers and sums of them.

Seventh. Shall enter the orders for, and copies of the advertisements for sale, and places at which they are to be set up, and the persons names that are to set them up.

Eighth. Shall enter the names of the purchasers of lands, and prices sold for, and payment of the overplus to whom it belongs, with the time and witnesses of such payment.

Ninth. In case any principals, or part thereof, are paid in before the times of payment in the mortgages, the whole amount of such principals paid in, shall be entered in the said book.

Tenth. Shall enter the cause of all suits, and the informations they have received, and of whom, at length, or if too long, refer to them in papers part minuting the substance.

Eleventh. Shall enter their meetings with the judges and supervisors, and persons present, together with the minutes of all proceedings of such judges and supervisors, particularly what were the deficiencies laid before them, what measures were taken for assessing and levying such deficiencies, and which of the said judges and supervisors were for assessing, or for neglecting delaying it.

XLIII. *And be it further enacted by the authority aforesaid,* That the principal shall also cause to be bound, other twelve books of paper, one of them for the use of each loan office, about two thirds of the size of the book of mortgages for the same county, to be delivered as aforesaid, with the book of mortgages; and that therein shall be entered all the accounts of the loan-office; that at the beginning there shall be an alphabet, wherein shall be inserted every man's name and the page wherein his account stands; and that the book be kept in the fairest and best method that the loan-officers can, and it is to remain in the custody of him who has the minutes of the mortgages and proceedings.

XLIV. *And be it further enacted by the authority aforesaid,* That the deeds to be granted by the loan-officers for any lands to be sold by them, whereof the equity of redemption is foreclosed, shall be in form following, to wit:

THIS INDENTURE, made the Tuesday of
in the year of our Lord one thousand seven
between the loan-officers of the of
of the other part: Witnesseth, That the said
for and in consideration of the sum
to them in hand paid, whereof they acknowledge the
heirs, executors and admin-
tors, thereof forever, have, pursuant to a law of the state of New-York,

entitled; An act for emitting the sum of two hundred thousand pounds in bills of credit, for the purposes therein mentioned, granted, bargained, sold, released, encosced, and confirmed and by these presents, do grant, bargain, sell, release, entice and confirm unto the said *heirs and assigns,* all that *together with all* and all manner of improvements, hereditamenss and appurtenances whatsoever, to the same belonging, or in any wise appertaining, and all the estate right, title, interest, claim and demand whatsoever, of the loan-officers of the *of* and their successors, to the above bargained premises, and every part thereof: To have and to hold the above bargained premises, and every part thereof, with the appurtenances, to the said *heirs and assigns,* to the sole and only proper use, benefit and behoof of the said *heirs and assigns* forever: In witness whereof, the loan-officers of the *have* hereunto set the seal of their corporation, together with their hands, the day and year above written.

Sealed and delivered in the presence of

To which deed the loan-officers shall affix the seal of the loan-office, and respectively subscribe their names in the presence of two witnesses.

A loose sheet of the blank mortgages filled up, shall be evidence of title to the purchaser.

XLV. *And be it further enacted by the authority aforesaid,* That upon every sale of lands, the loan-officers shall fill up one of the loose sheets of blank mortgages, like to the original mortgage, and attest the same as a true copy, under their hands and the seal of the loan-office, and give it instead of the original mortgage for evidence of the title to the purchaser. And the bond to be entered into by the loan-officers, shall be in the form following, viz.

Form of bond to be given by loan-officers.

K NOW all men by these presents. That we, *are* held and firmly bound unto the people of the state of New-York, in the sum of *to be paid* to the said people for which payment well and truly to be made and done, we bind ourselves our heirs, executors and administrators, and every of us, and them, jointly and severally, firmly by these presents. Sealed with our seals, and dated the *day of* in the year of our Lord one thousand seven hundred and

THE condition of the above obligation is such, That if the above bond den *shall and do well and truly perform the office and duty of one of the loan-officers of the* of *shall demean himself therein without favour, malice or partiality, the above obligation to be void, otherwise to remain in full force and virtue*

Sealed and delivered in the presence of

In case of forfeiture of such bond, the suit to be stayed on certain conditions.

XLVI. *And be it further enacted by the authority aforesaid,* That in case of the forfeiture of such bond as aforesaid the suit thereon shall be staid, on the defendant's payment or tendering in court to pay, the damages arisen by the breach of the condition of the said bond, with the costs to that time; and judgment be had thereon, a jury shall enquire of the damages according to

XLVII. *And be it further enacted by the authority aforesaid,* That for better satisfaction of the loan-officers, as to the title and value of what is offered in mortgage by borrowers, the loan-officers, or either of them, hereby authorised and empowered to examine the borrower and witness

upon oath, or if of the people called Quakers; on affirmation, concerning the same; a brief minute of which examination, and the names of the persons so examined, they shall enter into their minute-book of proceedings.

XLVIII. *And be it further enacted by the authority aforesaid,* That the treasurer shall pay the expence of printing the said bills, and the incidental expences which may arise in or about the same; and to each of the same persons authorised to sign the bills to be emitted by virtue of this act, at the rate of two shillings for every hundred of the said bills they may have respectively signed, according to such accounts thereof as they shall respectively produce, audited by the auditor of this state.

XLIX. *And be it further enacted by the authority aforesaid,* That the signers of the said bills, or any three of them, shall meet at the treasury of this state, on the first Monday in November, which will be in the year one thousand seven hundred and eighty-seven, and annually on every first Monday in November, and the treasurer of this state shall, when the said signers are so met as aforesaid, deliver unto them all such of the said bills of credit as shall then have come into his hands, as treasurer of this state, from any of the said loan-officers, for principal and interest, together with a list of the several denominations of the said bills; and having examined and compared the said bills with such list, shall destroy the said bills, and shall certify that they have destroyed the bills mentioned and designated on such list; which list, so certified, shall be delivered to the said treasurer, and a copy thereof, so signed, shall be kept by the said signers, or one of them, to be by him or them delivered to the legislature, when thereunto required.

Treasurer having received 150,000l. in gold or silver and bills of credit, to exchange such bills as are in circulation for gold or silver.

L. *And be it further enacted by the authority aforesaid,* That whenever the said treasurer shall have received from the said loan-officers, a sum equal to one hundred and fifty thousand pounds in gold or silver, partly in gold and silver, and partly in the bills of credit aforesaid; it shall and may be lawful to and for the said treasurer and he is hereby required to exchange such of the said bills as may be then in circulation, for the gold or silver so received, at the nominal value expressed on such bills as may, by any person, be tendered to him for exchange; and the said treasurer is hereby required, as soon as he shall have received to the said amount, in manner aforesaid, to give public notice thereof, by advertisement to be published in three of the news-papers printed in this state, and shall require all persons having any of the said bills of credit in possession, within sixty days from the date of such advertisement, to bring the same into the treasury, and to receive gold or silver therefor; and if any such bills should not be brought in, those remaining in circulation shall not be so exchanged, but shall be received in all payments into the treasury of this state.

LI. *And be it further enacted by the authority aforesaid,* That the treasurer of this state be, and he is hereby authorised and required to procure, at the expence of the people of this state, a competent number of blank certificates, with such checks and devices as he may deem proper, to guard against counterfeits, and with a margin, or counterpart, sufficiently large to contain a memorandum of the annual payment of interest which may be made thereon; the blanks of which certificates so to be procured, shall be filled up as to the numbers, sums, date, day, and year of passing this act, and be delivered as herein after directed; and the said blank certificates shall verally contain the words following, viz.

NUMBER

Form of certificates. **T**HE people of the state of New-York, have received on loan, from the sum of to be paid to the said or bearer, on or before the first day of January, which will be in the year of our Lord one thousand seven hundred and ninety, with interest from the day of one thousand seven hundred and eighty-five, at the rate of per centum per annum, to be paid annually at the treasury, according to a law of this state, passed on the day of

Treasurer to receive public securities on loan, and give certificates in lieu thereof. **LII.** *And be it further enacted by the authority aforesaid,* That the said treasurer be, and he is hereby authorized and required to receive on loan, in behalf of the people of this state, such public securities as are hereinafter described, and to issue and deliver, in lieu thereof, to any person or persons who shall, before the first day of May, which will be in the year of our Lord one thousand seven hundred and eighty-seven, make such loan or loans, a certificate or certificates, at the election of the lender, in the form herein before prescribed, to the amount or value of the sum or sums due as principal money, on the security and securities which he shall so receive on loan, and shall endorse on each certificate by him delivered, the amount of interest due to the first day of January, one thousand seven hundred and eighty-five, and subscribe his name thereto. Provided always, That no more than one certificate shall be issued by the said treasurer, for a sum less than twenty pounds, received from any one person.

LIII. *And be it further enacted by the authority aforesaid,* That each certificate to be delivered by virtue of this act, shall be numbered, beginning with number one, and so on in arithmetic progression, to the last that shall be delivered, inclusive; and the blanks of the certificates shall be filled as follows, viz. The first and third with the name of the person making the loan; the second, with the amount of principal money of the security or securities loaned; the fourth, with the word first; the fifth with January; and the sixth with a rate of interest equal to the interest expressed in the certificates received on loan; and the day, month and year in which this act passed, shall be printed in the certificates; and each certificate, before the same is delivered, shall be signed by the said treasurer, with his name and title of office.

LIV. *And be it further enacted by the authority aforesaid,* That the said treasurer shall be, and he is hereby authorized and required to receive the following public securities on loan, in manner aforesaid, viz.

What kind of public securities to be received on loan. Loan-office certificates issued by the continental commissioner of loans in this state, for monies lent to the United States, at the nominal value expressed therein, if issued on

or before the first day of September, one thousand seven hundred and seventy-seven.

Loan-office certificates issued by the continental commissioner of loans in this state, for monies loaned to the United States, since the said first day of September, reduced to specie value by the scale of depreciation, established by the United States in congress assembled, on the twenty-eighth day of July, one thousand seven hundred and eighty-one.

Certificates issued or to be issued by the continental commissioner of accounts within this state, for services performed or articles delivered by the inhabitants of this state, for the use of the United States, commonly called Barber's notes.

Certificates issued by the treasurer of this state, for monies borrowed for the use of this state, and directed to be paid by an act, entitled, (a) An act to provide for the payment of certain contingent expences of this state, passed the 25th October, 1779, reduced to specie value by the continental scale of depreciation.

Certificates issued by the agent of this state, in pursuance of an act, entitled, (b) 3d sess. ch. 69. (b) An act to procure supplies for the use of the army, and to prevent a monopoly of cattle within this state, and more effectually to prevent supplies of cattle to the enemy, passed the 24th of June, 1780.

Certificates issued by the treasurer of this state, in pursuance of an act, entitled, (c) 3d sess. ch. 73. (c) An act to provide for the payment of certain monies taken on loan by this state, passed the 30th day of June, 1780, at the rate of one dollar in silver, for every forty of the nominal dollars specified in such certificates.

Warrants, with receipts thereon endorsed, given by virtue of the act, entitled (d) 3d sess. ch. 78. (d) An act to complete the continental battalions raised under the direction of this state, passed the first day of July, 1780, at the rate of one dollar in silver, for every bushel of wheat specified in such warrants.

Certificates granted for horses purchased by this state, for the use of the armies of the United States, in the year 1780.

Accounts liquidated and certified, or certificates granted by the late auditor-general of this state, or the auditor of this state for the time being, reduced to specie value, if not already so reduced, by the continental scale of depreciation.

Certificates issued by the auditors appointed in pursuance of the act, entitled (e) 4th sess. ch. 7. (e) An act to liquidate and settle the accounts of the troops of this state in the service of the United States, passed the 4th day of October, 1780.

Certificates given, or which may be given by virtue of the act, entitled, (f) 7th sess. ch. 19. (f) An act to empower the auditors appointed to liquidate and settle the accounts of the troops of this state in the service of the United States, to grant certificates to the troops of this state in the service of the United States, for their pay accrued for the time therein mentioned, passed the 6th day of April, 1784.

Certificates issued or to be issued by virtue of an act, entitled (g) 7 sess. ch. 45. (g) An act for the settlement of the pay of the levies and militia, for their services in the late war, and for other purposes therein mentioned, passed the 27th day of April, 1784.

And all other certificates issued by the treasurer of this state for monies due by the people of this state, to any person or persons whomsoever.

L.V. And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the said treasurer, and he is hereby authorized and required, immediately after completing any certificate or certificates, and having signed and endorsed the same as herein directed to pay to the holder thereof, the one fifth part of the interest endorsed thereon, as aforesaid, in the said bills emitted by virtue of this act, and remaining in the treasury; and for the residue of the said interest so endorsed as aforesaid, to give unto such holder a certificate in the form following, to wit:

Form of certificate
to be given for the
interest.

NUMBER

THE people of the state of New-York are indebted to
in the sum of for interest
to be paid to the said or bearer, on or before the first day of May,
which will be in the year of our Lord one thousand seven hundred and
eighty-seven, according to an act, entitled, An act for emitting the sum of
two hundred thousand pounds in bills of credit, for the purposes therein
mentioned.

Which certificate, so to be given for interest, shall be
Certificates given numbered with the same number as the certificate given for
for interest, to bear the same number as the principal sum on which such interest is due; and the
those for principal. blanks in the body of each certificate so to be given for in-
terest, shall be filled up as follows; the first and third with the name of the
person to whom such interest is due, and the second with the sum so due to
such person for interest as aforesaid; and each certificate so given for interest,
shall, before the same is delivered, be signed by the treasurer, with his name
and stile of office; and the said treasurer having so paid a part of the interest
in the said bills of credit, and given such certificate as aforesaid for the residue
of the interest, shall endorse on the certificate by him given for the principal
money of the security or securities so loaned, interest paid to the first day of
January one thousand seven hundred and eighty-five, and subscribe such
endorsement with his name and stile of office.

LVI. *And be it further enacted by the authority aforesaid,* That the said
treasurer shall make regular entries in a book or books to be kept for the
purpose of the certificates for securities loaned, as aforesaid, which he shall
issue by virtue of this act; and which book or entries shall contain in conven-
ient order, the number and date of such certificates, and the names of the
persons to whom such certificates shall be issued, the principal sum, the inter-
est paid thereon, the day to which it was paid, and the annual interest to
arise thereon; and also a like entry of each and every security he shall re-
ceive on loan as aforesaid, reducing in all cases the nominal sum to specie
value, as herein before directed.

LVII. And to the end that the credit of the bills to be emitted by virtue of
this act, may be most effectually established; *Be it enacted by the authority*

Gold and silver, and
the bills emitted by
this act to be received
for duties.

aforesaid, That gold and silver, and the bills of credit to be
emitted by virtue of this act, shall be received by the col-
lector, for duties arising on goods, wares and merchandize,
which shall be imported into this state after the passing of
this act, and in the treasury of this state in payment arising from the
duty on goods sold by public vendue, by virtue of the act, entitled,

§ 7th sess. ch. 4.

† An act for the regulation of sales by public auction.

Gold and silver, and
bills only to be re-
ceived by loan-offi-
cers.

LVIII. *And be it further enacted by the authority aforesaid,*
That gold and silver, and the bills of credit emitted in pur-
suance of this act, and no other species of monies or bills
shall be received by the loan-officers, in discharge of the
principal and interest due on such mortgages.

Same power given
to the common coun-
cil of New-York, as
to the judges and su-
pervisors of the other
counties.

LIX. *And be it further enacted by the authority aforesaid,*
That all the power and authority by this act given to, and
duties required to be done by the judges and supervisors of
the several counties of this state, shall be vested in, and ex-
ercised by the mayor, alderman and commonalty of the
city of New-York, in common council convened, who shall be subject to

like forfeitures, so far forth as the matters and things in this act contained relate to the said city and county of New-York; and that the word county, in this act mentioned, shall be construed to comprehend the said city and county of New-York.

LX. And be it further enacted by the authority aforesaid,
In what cases bills of credit to be a legal tender. That the bills of credit to be emitted by virtue of this act, shall be a legal tender in all cases where any suit is or shall be brought or commenced for any debt or damages, and the costs of suit, in any stage of the proceedings thereof. Provided always, That nothing in this act shall extend to contravene any treaty between the United States of America, and any foreign state or power.

LXI. And be it further enacted by the authority aforesaid, That one of the loan-officers of each respective county, shall be allowed, in addition to the salaries herein before mentioned, the sum of six-pence for every mile such loan-officer shall be obliged to travel for the purpose of receiving the bills of credit, in and by this act directed to be delivered to the loan-officers, to be computed from the court-house of the county for which such loan-officer shall be appointed, to the city of New-York.

LXII. And be it further enacted by the authority aforesaid,
Certificates issued by virtue of this act, to be received in payment for confiscated estates and waste lands. That the certificates to be issued by the treasurer, by virtue of this act, for securities taken on loan, and also the certificates to be issued for part of the interest due thereon, previous to the first day of January, one thousand seven hundred and eighty-five, shall be receivable at the treasury of the state, in payments for confiscated estates to be sold by the commissioners of forfeitures, and also in payment for the waste and unappropriated lands of this state.

C H A P. XLI.

An ACT for regulating Trials of Issues, and for returning able and sufficient Jurors.

Passed 19th April, 1786.

I. BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That all issues joined, or hereafter to be joined, in the supreme court, or in any other court, and brought into the supreme court to be tried, and which are or may be triable by the country, shall be tried in the proper counties where the lands, tenements or hereditaments in demand or question, shall be situated, or the cause of action, suit, controversy, or offence shall arise, or be committed; unless the supreme court, upon motion in behalf of the people of this state, if they be interested, or upon motion of any plaintiff, defendant, or avowant, or tenant, or defendant, shall think proper to order the trial to be at the bar of the said supreme court, which shall only be done in cases of great difficulty, or which require great examination. But this clause shall not extend to any action merely transitory, nor prevent the said supreme court from ordering trials by foreign juries, in all cases where it shall be proper and necessary.

II. And be it further enacted by the authority aforesaid,
Justices of the supreme court in vacations to hold circuit courts. That the justices of the supreme court for the time being, or some or one of them, shall, yearly, and every year for ever hereafter, in the vacations, at least once in a year, and oftener if need be, hold a court in each of the counties of

See 12th sess. ch. 23. this state, as well in the counties where the supreme court
 sec. 3. shall sit, as in every of the other counties of this state, for the
 trials of all issues joined or to be joined, in the supreme court, or in any other
 court, and brought into the supreme court to be tried, and which are or
 may be triable in the said respective counties; which courts shall be called
 the circuit courts; and that each of the said circuit courts shall be held in
 each of the counties of this state, so many days each time as the justices or
 justices of the su- justice holding the same, shall think necessary. And further,
 preme court, in term, That the justices of the supreme court for the time being,
 to appoint the time shall, from time to time, in the term next preceding the hold-
 of holding the circuit ing of every of the circuit courts, appoint the time of hold-
 courts. ing such circuit courts in every of the said counties in which

The circuit courts it shall be necessary to hold the same in the then next va-
 to be held at the cation, and shall cause the same to be entered in the min-
 court-house. utes of the same supreme court; and that such circuit court,
 † Altered as to New. York and Albany, shall respectively be held at the † court-house of the county
 12th sess. ch. 4. in which the said circuit court is so appointed to be held;
 and in case there be no court-house in the county, then at such place as the
 said justices of the supreme court, during the term next preceding the hold-
 ing of such circuit court, shall, for that purpose, appoint.

III. *And be it further enacted by the authority aforesaid,* That when any
 such issue is to be tried at any of the said circuit courts, the tenor or tran-
 script of the record thereof, with a respite of the jury, or an award of process
 for their appearance to the supreme court at the next term, unless the justices
 of the supreme court, some or one of them, at the day and place appointed
 for holding the said circuit court at which such issue is or ought to be tried,
 shall sooner come, shall be made and sent under the seal of the said supreme
 court, to such of the justices of the same court, as may hold the said circuit
 court in the county where such issue is or ought to be tried; and a similar
 clause shall be inserted in the process for the appearance of the jury at the said
 circuit court; and if one party demand and have such tenor or transcript of
 the record as aforesaid, to deliver to such justices or justice before whom such
 issue is to be tried, another tenor or transcript of the same record shall be made
 and delivered to the other party, if he require the same.

IV. *And be it further enacted by the authority aforesaid,*
 Authority given to That the justices of the supreme court for the time being,
 the justices of the su- and each and every of them, as a justice or justices of the su-
 preme court, to try preme court, and without any other commission to be had
 issues in the circuit or made for that purpose, shall be, and hereby is and are
 courts. fully authorised, empowered and required, at the said respective circuit
 courts, to try all such issues, and take all such inquests, by default or other-
 wise, as are or ought to be tried or taken in the said circuit courts respective-
 ly, and to record nonsuits and defaults before him or them; and to do and
 execute all other matters and things as fully, in every respect, as any justices
 of nisi prius, or justices of assize, may or ought by law to do and execute.
 And the said justices or justice, before whom any such circuit court shall be
 held, shall return the said tenor or transcript, and the writ or process for the
 appearance of the jury, and the panel, with the verdict and proceedings be-
 fore him or them had thereupon, to the supreme court, at the next term;
 and the said supreme court shall receive and record the same, and give judg-
 ment thereupon according to law. And further, That it shall and may be

Justices of the supreme court to take assizes at circuit courts.

lawful to and for the justices of the supreme court and each and every of them, for the time being, as a justice or justices, of the supreme court, and without any other commission to be had or made for that purpose, to take assizes of novel disseisin, or any other assizes at the said several circuit courts; and if the taking of any assize at

any such circuit court, be deferred for any cause whatsoever, And may adjourn the same into the supreme court, al writ, to the said supreme court, where such proceedings shall thereupon be had, as law and justice may require. And when the matter shall come to the taking of the assize, the said supreme court shall remit the matter to such of the justices as shall hold the next circuit court in the county where the same assize is or ought to be taken, before whom the said assize shall be taken; any law, custom or usage to the contrary notwithstanding.

V. *And be it further enacted by the authority aforesaid,* That all sheriffs, and other officers to whom the return of any writs of assize, juries or certificates shall appertain, shall cause to come, at every such circuit court to be held in their respective counties, before the justices or justice of the supreme court who shall hold such circuit court, all such writs of assize, juries and certificates, before whatsoever justices or justice arraigned, or by whatsoever writs, in their respective counties, together with the panels, attachments, re-attachments, summons, re-summons, and all other minuments whatsoever, any ways concerning those assizes, juries and certificates, in all things according to law and the nature of them arrayed and executed. Provided always, That the attachments, re-attachments, summons and re-summons thereof, shall be made at least fifteen days before the holding of such circuit court.

VI. *And be it further enacted by the authority aforesaid,* That all issues upon legality of marriage, and upon pleas or allegations, of general or special bastardy, shall be tried by the country, and not otherwise; any law, custom or usage to the contrary notwithstanding.

VII. *And be it further enacted by the authority aforesaid,* That when any one who is or shall be impleaded before any judges or justices, doth alledge an exception, praying that the justices will allow it, and they will not allow it, if he who alledged the exception do write the same exception, and require that the justices will put their seals to it for a witness, the justices shall do so; and if one will not, another of the justices shall: And if a writ shall be brought to reverse the judgment in such case, and the same exception be not found in the roll, and the plaintiff shew the exception written, with the seal of the justices put to it, the justice shall be commanded that he appear at a certain day, either to confess or deny his seal; and if the justice cannot deny his seal, the court shall proceed to judgment, according to the same exception, as it ought to be allowed or disallowed.

VIII. *And be it further enacted by the authority aforesaid,* That every venire facias, for the trial of any issue in any action or suit, civil or criminal, in any court of record within this state, shall be awarded of the body of the proper county where such issue is triable; excepting in such cases in which foreign juries shall be deemed necessary; in which cases the venire facias shall be awarded of the body of the county from which such foreign jury are directed to come.

IX. *And be it further enacted by the authority aforesaid,* That all jurors other than strangers upon trials per medietatem lingue) who shall be return-

ed upon trials of issues in the supreme court, or in any of the circuit courts, or in any of the inferior courts of common pleas, or in the mayor's courts of the cities of New-York, Albany or Hudson, or in any court of general or quarter sessions of the peace, or before any justices of assize,oyer and terminer, or gaol delivery, in any city or county of this state, or in any other court of record, shall every of them be above the age of twenty-one, and under the age of sixty years, and shall each of them have, in either of the said counties, in his own name or right, or in trust for him, or in his wife's right, in the same county, a freehold in lands, messuages or tenements, or of rents in fee, or for life, of the value of sixty pounds, free of all reprises, debts, demands or incumbrances whatsoever; and in the cities of New-York, Albany or Hudson, a freehold of the value aforesaid, or a personal estate of the like value free from all reprises, debts, demands or incumbrances whatsoever. And all men having such estates as aforesaid, are hereby enabled and made liable to be returned and to serve as jurors, for the trials of issues before the judges, justices and courts aforesaid: And if any man not so qualified, shall be returned upon any such jury, or tales in default of such jurors, it shall be good cause of challenge to the juror not so qualified; and such person, so returned, shall be discharged upon such challenge, or his own allegation and oath thereof. And to the end that jurors so qualified may be always returned, the writs of venire facias juratores, which shall at any time hereafter be awarded and issued for the impanelling of juries within any of the counties of this state, except the county of New-York, shall have, in the body thereof, the words following; That is to say, "Twelve free and lawful men of your county, each of whom shall have, in his own name or right, or in trust for him, or in his wife's right, a freehold in lands, messuages or tenements, or of rents in fee, or for life, of the value of sixty pounds, free from all reprises, debts, demands or incumbrances whatsoever;" and in the city and county of New-York, the words following; That is to say, "Twelve free and lawful men of your city and county, each of whom shall have, in his own name or right, or in trust for him, or in his wife's right, a freehold in lands, messuages or tenements, or a personal estate of the value of sixty pounds, free of all reprises, debts, demands or incumbrances whatsoever;" and in the cities of Albany and Hudson, for trials in their respective mayor's courts, the words following; That is to say, "Twelve free and lawful men of your city, each of whom shall have,

‡ So in the original.

"in his own name or right, or in trust for him, ‡ or in trust for him, or in his wife's right, a freehold in lands, messuages or tenements, or a personal estate of the value of sixty pounds, free of all reprises, debts, demands or incumbrances whatsoever:" And the residue of the said respective writs shall be in the usual form. And that upon every such writ and writs of venire facias juratores, the sheriff, coroner, or other returning officer or officers, in each respective city and county, unto whom the making of the panel of jurors shall appertain, shall not return any man in any such panel, unless he shall be so qualified as aforesaid.

Places of abode and additions of jurors to be inserted in the panel.

X. And be it further enacted by the authority aforesaid, That every sheriff and other officer to whom any writ or precept of venire facias juratores shall be directed, for the trial of issues in the said supreme court, or in any of the courts aforesaid, except in cases where a special jury shall be struck by order or rule of court, shall, upon return thereof, annex a panel to the same writ or precept, containing the names, places of abode, and additions of a com-

petent number of jurors so qualified as aforesaid, to serve on juries, not less than forty-eight, nor more than seventy-two, without the direction of the judge or judges, justice or justices, before whom such issue is to be tried, who are hereby respectively empowered and required, if he or they see cause, by order under his or their hands respectively, to direct a greater or less number : and then such number as shall be so directed, shall be the number to be returned on such jury. And such sheriff, or other officer, shall return a like panel, containing the same names, places of abode, and additions to every writ or precept of venire facias juratores, directed to and returnable by him at the same court (except in cases where a special jury shall be struck by order or rule of court.) And in order that such judge or judges, justice or justices, may be the better enabled to direct, according to the intent of this act, what number of jurors are necessary to be summoned, the party or parties in any cause or causes which may be at issue, and to be tried in any of the courts aforesaid, or his or their attorney or attorneys, shall, at the same time he or they give notice of trial to the party or attorney on the other side, give the like notice in writing to the judge or judges, or justice or justices, before whom such suit, action or issue is to be tried, or is triable.

XI. *And be it further enacted by the authority aforesaid,* That the names of all the persons contained in the panel annexed to the writ of venire facias juratores, need not be inserted in the bodies of the writs of habeas corpora juratorum or distringas, subsequent to such writ of venire facias juratores ; but it shall be sufficient to insert in the mandatory part of such writs of habeas corpora juratorum, "The bodies of the several persons named in the panel to this writ annexed," and in the mandatory part of such writs of distringas, "The several persons named in the panel to this writ annexed," or words of the like import, and to annex to such writs respectively, panels, containing the same names, places of abode and additions, as were returned in the panels to such venire facias juratores. And that for the making the returns and the panels aforesaid, and annexing the same to the said respective writs, no other fee or fees shall be taken than such as are now allowed by law to be taken for the return of the like writs and panels annexed to the same. And further, That the parties concerned in any such trials may have timely notice of the jurors who are to serve upon such trials, in order to make their challenges to them, if there be cause, every sheriff, or other officer to whom the return of the venire facias juratores, or other process against them, does or may belong, shall, upon application made to him for that purpose, at any time within five days next before the day on which such writ or process is returnable, deliver, or cause to be delivered to any party or parties in any cause or issue to be tried by such jurors, or to any attorney or agent for any or either of the parties, a true copy of such panel of jurors, certified under his hand to have been summoned, and whose names shall be so inserted in the panel annexed or to be annexed to such writ or process, with their respective places of abode and additions ; such person or persons so applying for the same, paying therefor to such sheriff or other returning officer giving the same, the sum of two shillings, and no more.

XII. *And be it further enacted by the authority aforesaid,* That every summons of any person so qualified to any the services aforesaid, shall be made by the sheriff or other returning officer, or his lawful deputy, six days at the least before the day on which the person so summoned as a juror, ought to make his appearance.

XIII. And to the end that the respective sheriffs may be the better enabled to summon jurors, qualified according to the intent and direction of this act; *Be it further enacted by the authority aforesaid,* That it shall be, and it is hereby made the duty of the sheriff of the city and county of New-York, and of each and every sheriff of each of the other counties of this state, at their own expence respectively, yearly and every year, to procure a list of the freeholders and others in their respective bailiwicks, qualified to serve as jurors on trials.

No person to be returned as a juror that has served within one year before, except on struck juries, and in mayor's court.

XIV. *And be it further enacted by the authority aforesaid,* That no man shall be summoned or returned as a juror to serve on trials, unless upon struck juries, at any of the courts aforesaid, who hath, or shall have served therein, within the space of one year before, the said several mayor's courts excepted. And if any sheriff, or his deputy, shall wilfully transgress therein, the court to which such return shall be made, is hereby authorized and required, on examination and proof of such offence, to set a fine upon such offender for every such offence, not exceeding forty shillings.

XV. *And be it further enacted by the authority aforesaid,* That no sheriff or other officer, to whom any writ or precept for summoning any jury or inquest shall be directed, or any bailiff, or deputy of any such sheriff or officer, shall, directly or indirectly, take, accept or receive any money or other reward, to excuse any man from serving, or being summoned to serve on any jury or inquest, or under that colour or pretence, on pain of forfeiting fifty pounds for every such offence; the one moiety thereof to the people of the state of New-York, and the other moiety thereof to any person who shall prosecute for the same to effect, and to be recovered, with costs of suit, in the inferior court of common pleas of the county, or any of the said mayor's courts, where the offence shall have been committed, by action of debt, bill, plaint or information, wherein no essoin shall be allowed, nor more than one imparlance.

XVI. *And be it further enacted by the authority aforesaid,* That upon all trials in any of the courts aforesaid (except for capital offences, or by struck juries, or where views shall have been had) the name of each and every man who shall be summoned and impannelled as a juror upon such trial, with his place of abode, and addition, shall be written on several and distinct pieces of paper or parchment, being all as near as may be of equal size, and shall be delivered unto the clerk of the court in which such trial is to be had, by the sheriff, or other officer who shall have returned such jury, or his deputy or agent, and shall, by direction and care of such clerk, be rolled up, all as near as may be in one and the same manner, and put together into a box, to be by each respective sheriff provided for that purpose; and when the cause, or any cause or issue for the trial whereof they are returned as jurors, shall be brought on to be tried, the clerk of the court, or some other indifferent person, by direction of the court, shall, in open court, draw out twelve of the said papers or parchments, one after another; and if any man whose name shall be so drawn, shall not appear, or be challenged and set aside, then such further number thereof shall be drawn, as shall make up the number twelve who do appear, after all causes of challenge allowed as fair and indifferent. And the said twelve men, so first drawn and appearing, and approved as indifferent, shall be sworn, and be the jury to try such cause or issue, and their names shall be marked in the panel; and the names of the men so drawn and sworn, shall be kept apart by themselves, in some other

box, to be provided as aforesaid, and kept for that purpose, until such jury shall have given in their verdict, and the same is recorded, or until such jury shall, by consent of the parties, or leave of the court, be discharged, and then the said names shall be rolled up again, and returned to the former box, there to be kept with the other names remaining at that time undrawn; and so it shall be done as often as any cause or issue remains then to be tried: But the names of such as shall at any time be drawn, and shall not appear, or be challenged and set aside, shall, immediately after the jury in such case be sworn, be rolled up again, and returned to the same box with the names at that time undrawn. And if any cause or issue shall be brought on to be tried in any of the said courts respectively, before the jury, in any other cause or issue, shall have brought in their verdict, or be discharged, it shall and may be lawful for the court to order a jury to be drawn in manner aforesaid, out of the names then remaining in the said first mentioned box, for the trial of such cause or issue which shall be so brought on to be tried.

Penalty on jurors, constables and other officers, for not attending their duty. XVII. *And be it further enacted by the authority aforesaid,* That every grand or petit juror, constable or other officer, whose duty it is to attend any of the courts of record in this state, who shall refuse or neglect to attend according to his duty, shall be liable to be fined by such court, in a sum not exceeding ten pounds; and in every case where such fine shall be imposed by any of the said courts, such court shall immediately cause public proclamation of such fine, to be made by the crier of the court; and if such delinquent juror, constable or other officer, who shall be fined as aforesaid, shall not, during the term or sitting of the said court in which such fine shall be imposed, shew a satisfactory reason or excuse to the said court, for his default or non-attendance, then such fine, so imposed, shall be estreated into the court of exchequer, in order that the same may be levied and paid into the treasury, for the use of the people of this state.

XVIII. *And be it further enacted by the authority aforesaid,* That in any actions brought or to be brought in the supreme court, or in any of the inferior courts of common pleas, in either of the counties of this state, or in either of the said mayor's courts, where it shall appear to the court in which such actions are or shall be depending, that it will be proper and necessary, that the jurors who are to try the issues in any such actions should have a view of the messuages, lands or place in question, in order to their better understanding the evidence that will be given upon the trials of such issues, in every such case the said respective courts, in which such actions are or shall be depending, may order special writs of distringas, or habeas corpora juratorum, to issue, by which the sheriff or other officer to whom the said writ shall be directed, shall be commanded to have six out of the first twelve of the jurors named in the panel annexed to such writ, or some greater number of them, at the place in question, some convenient time before the trial; who then and there shall have the matters in question shewn to them by two persons in the said writs named, to be appointed by the court; and the sheriff or other officer who is to execute the said writs, shall, by a special return upon the same, certify that the view hath been had according to the command of the said writs; and in such case, if there is not a struck jury in such case, and the parties, or their agents or attorneys on both sides, shall not mutually agree, by writing under their hands, on the jurors who are to have the view, the names of all the jurors returned for the trial of such case, with their places of abode and additions, shall be written on several and distinct

pieces of paper or parchment, and rolled up and put into a box as aforesaid, in the presence and by the direction of one of the judges of the court in which such cause is or shall be depending, and then the names of so many of them as shall be necessary to go upon the view, but not less than six shall be drawn out, one after another, in the presence of such judge; and the names of the jurors so mutually agreed upon, or ballotted as aforesaid, with their places of abode and additions, shall be first written on the panel to be annexed to such writs of habeas corpora juratorum or distringas; and the names of the residue of the jurors returned for the trial of such cause, with their places of abode and additions, shall be written on such panel, immediately following the names of the jurors so agreed upon or ballotted for the view, in the same order they may stand in the panel annexed to the venire facias: And when such cause is brought on to be tried, such of the said jurors as shall have had the view, and do appear, shall be first sworn upon the jury to try the said cause, before any drawing, and then so many more shall be drawn as aforesaid, to be added to the viewers who appear, as shall, after all defaults and challenges allowed, make up the number twelve, to be sworn for the trial of such cause. And further, That in all other cases where any of the jurors shall have had the view of the premises in question or demand, by virtue of any writ, original or judicial, such of the jurors as shall have had the view, and do appear, and are not challenged, or found unexceptionable, shall be first sworn, and only so many drawn or ballotted, as to make up the number twelve.

The courts to order a struck jury on motion. *XIX. And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said supreme court,

and the several inferior courts and mayors courts herein before mentioned, upon motion in behalf of the people of this state, or of any prosecutor or defendant in any indictment or information, other than for capital offences, or of any plaintiff, demandant, avowant, defendant, or tenant, in any action, cause or suit whatsoever, depending or to be had, brought, prosecuted, or carried on, in any of the said courts, and triable by a jury of twelve men, to order and appoint a jury to be struck for the trial thereof; and in such case the said courts shall order the sheriff of the proper county, or other officer who ought to impanel the jury in such case, to bring into the office of the clerk of the said court, at a certain day, a book, containing the names of the several persons in his county or bailiwick, qualified to serve as jurors on such trial, with their places of abode and additions; and after the return of such book, the party applying for such struck jury, shall give due notice to the opposite party, and to the clerk of the said court, or his deputy, of the time and place of striking such jury; at which time and place, the clerk of the said court, or his deputy, shall attend with the said book, and shall, in the presence of the parties, or such of them as shall attend for that purpose, copy out of the said book, the names of forty-eight such persons, with their places of abode and additions, as he shall think most indifferent between the parties, and best qualified to try such cause or issue; and then the party applying for such struck jury, or his agent or attorney, shall first strike out one of the said names, and then the opposite party, or his agent or attorney, another; and so, alternately, until each shall have struck out twelve; But if such opposite party shall not attend such striking, nor any person in his behalf, then the said clerk, or his deputy, shall strike for the party not attending; and when each have struck out twelve, as aforesaid, the remaining twenty-four shall be the jury to be

returned to try the said cause or issue : And the clerk of the said court, or his deputy, shall thereupon make a fair copy of the names of the same remaining twenty-four persons, with their places of abode and additions, and certify the same under his hand, to be the list of jurors, struck as aforesaid, for the trial of such cause or issue ; which list shall be delivered to the sheriff, or other officer, who ought to summon such jury, together with the venire facias ; and such sheriff, or other officer, shall thereupon annex the same list to such venire facias, and return the same as the panel of the jury to try such cause or issue, and summon them according to the command of the same writ : And upon the trial of such cause or issue, there shall be no balloting, but the jurors so struck shall be called as they stand upon the panel, and the first twelve of them who shall appear and are not challenged, or shall be found duly qualified and indifferent, shall be the jury, and

Fees for striking a jury to be paid by the party applying for such jury. be sworn to try the said cause or issue ; but the person or party who shall apply for such struck jury, shall bear and pay the fees for striking thereof, and shall not have any allowance for the same, upon the taxation of costs.

XX. *And be it further enacted by the authority aforesaid,* That no sheriff or other officer, to whom the return of juries shall or may at any time belong, shall impanel or return any person or persons, to serve on any jury for the trial of any capital offence, who at the time of such return, would not be qualified by virtue of this act to serve as jurors in civil causes in the supreme court ; and the same matter and cause alledged by way of challenge, and so found, shall be admitted and taken as a principal challenge, and the person and persons so challenged, shall and may be examined on oath of the truth of such matter.

In what cases one half the jury shall be citizens, and the other half aliens. XXI. *And be it further enacted by the authority aforesaid,* That all manner of juries and inquests hereafter to be taken or made between aliens and citizens of any of the United States of America, be they merchants or others, in any court, or before any justice or justices, and whether this state be party, or interested, or not, except in cases of treason, the one half of the jury or inquest shall be citizens of this state, and qualified by this act to serve on such juries or inquests, and the other half of aliens, if so many aliens and foreigners be in the city, county or place where such jury or inquest is to be taken or made, who be not parties, nor with the parties in the contracts, pleas, quarrels or offences, whereof such juries or inquests are or ought to be taken : And if there be not so many aliens or strangers, then there shall be put on such juries or inquests, as many aliens and strangers as shall be found in the same city, county or place, which be not thereto parties, nor with the parties as aforesaid, and the remnant of citizens of this state qualified by this act to serve on such juries or inquests, and who shall be good men, and not suspicious to the one party nor to the other.

Challenges made by prosecutor for the state, to be tried in the same manner as the challenges of other parties. XXII. *And be it further enacted by the authority aforesaid,* That in all cases where the attorney-general of this state, in behalf of this state, or he who shall in any case prosecute for the people of this state, shall challenge any juror as not indifferent, or for any other cause, he who shall make any such challenge, shall immediately assign and shew the cause of such challenge, and the truth thereof shall be enquired of and tried, in the same manner as the challenges of other parties are or ought by law to be enquired of and tried.

Circuit courts may *XXIII. And be it further enacted by the authority aforesaid,*
order a tales de cir. That the justices or justice of the supreme court before whom
cumstantibus. any trial shall be brought at any of the said circuit courts,
 by virtue of any writ, with a nisi prius, where a full jury shall not appear, or
 after appearance of a full jury, by challenge the jury is like to remain untaken
 for default of jurors, shall have authority by virtue of this act, upon request
 made for the people of the state of New-York, by any authorised thereunto,
 or assigned by the justices or justice of the court before whom the inquest is
 to be taken, or upon request made by any party who prosecutes as well for
 the people of this state, as for himself, in any case, or upon request made by
 the parties, plaintiff, demandant or avowant, or tenant or defendant, or his
 or their attorney, to command the sheriff, or other officer to whom the mak-
 ing the return of the said writs shall appertain, to name and appoint, as often
 as need shall require, so many of such other able persons of the said county,
 qualified to serve on such juries, according to the intent of this act, then present
 at such circuit court, and to add and annex their names to the former panel,
 as shall make up a full jury of twelve men, for the trial of every such issue ;
 and every of the parties shall and may have his or their challenge to the jurors
 so named, added and annexed to the said former panel, by the said sheriff or
 other officer, in such wise as if they had been impanelled upon the venire
 facias awarded to try the said issue ; and the said justices or justice shall and
 may proceed to the trial of every such issue, with those jurors that were be-
 fore impanelled and returned, and with those newly added and annexed to
 the said former panel by virtue of this act, in such wise as he or they might or
 ought to have done; if all the said jurors had been returned upon the writ of
 venire facias awarded to try such issue. And further, That all and every
 such trial shall be as good and effectual in the law, to all intents, constructions
 and purposes, as if such trial had been had and tried by twelve of the jurors
 impanelled and returned upon the writ of venire facias awarded to try such
 issue : And in case such persons as the said sheriff or other officer shall name
 and appoint as aforesaid, or any of them, after they shall be called, be present
 and do not appear, or after his or their appearance, do wilfully withdraw
 him or themselves from the presence of the court, that then such justices or
 justice shall and may set such fine upon every such juror making default, or
 wilfully withdrawing himself as aforesaid, as such justices or justice shall
 think good by his or their discretion ; the same fine to be levied in such man-
 ner and form as issues forfeited and lost by jurors for default of their appear-
 ance, are or ought by law to be levied.

XXIV. And be it further enacted by the authority aforesaid, That if any
 jurors sworn for the trial of any issues, or in any assises, or other inquests to
 be taken between the people of the state of New-York, and any party, or
 between party and party, shall take any thing, by them or other of the party
 plaintiff or defendant, or of any other, to give their verdict, and thereof be
 found guilty, in any court of record, either at the suit of the party that will
 sue for himself, or for the people of the state of New-York, or any other
 person, by original writ, bill or plaint, every of the said jurors shall pay ten
 times as much as he hath taken, with the costs of suit ; and he that will sue,
 shall have the one half, and the people of the state of New-York the other
 half ; and that all the embraceors that bring or procure such jurors and in-
 quests, to take gain or profit, shall be punished in the same manner and form
 as the jurors : And if the party to the plea shall bring any such suit or action and
 shall recover therein, he shall also recover his damages, by the assessment of

the inquest : And if the juror or embraceor so found guilty, shall not have whereof to make satisfaction in the manner aforesaid, he shall be imprisoned for one year.

Jurors not compelled to give a general verdict. XXV. *And be it further enacted by the authority aforesaid.* That no jury, upon any trial hereafter to be had, shall in any case be compelled to give a general verdict, so that they find a special verdict, and shew the truth of the fact, and require the aid of the court of justices : But if they, of their own will, do give a general verdict, their verdict shall be admitted at their own peril.

Firemen exempted from serving on juries. XXVI. Provided always, That this act shall not extend to compel any fireman of the city of New-York, or of the city of Albany, or of the township of Brooklyn in King's county, lawfully appointed, or to be appointed, to serve as jurors in any case whatsoever.

XXVII. *And be it further enacted by the authority aforesaid,* That the act, entitled, An act concerning the circuit courts ; and the act, entitled, An act to punish delinquent jurors, constables and other persons ; and all the laws of the late colony of New-York, relating to jurors, shall be, and hereby are repealed.

C H A P. XLIII.

An ACT for the more effectual Prevention of Fires in the City of New-York.
Passed 22d April, 1786.

WHEREAS the storing of pitch, tar, turpentine, rosin, spirits of turpentine, linseed oil, or shingles, in any houses, store-houses, cellars, or other places within this city, may be of very bad consequence in case of fire breaking out at or near the place where any such commodities are stored. And whereas the firing and discharging of guns, pistols, rockets, crackers, squibs, and other fire-works in the city of New-York, may not only do personal injury to the inhabitants and others, but the city be in danger of being set on fire by such practices ; for remedy whereof,

I. *Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That from and after the first day of June next, no pitch, tar, turpentine, rosin, spirits of turpentine, linseed oil, or shingles, shall or may be put in any place in the city of New-York, to the southward of fresh water, other than in such proper place or places as shall be appointed and approved of by the mayor, aldermen and commonalty of the city of New-York, in common council convened, under the penalty of ten pounds for every offence, or refusal to remove the same, to be levied by warrant under the hand and seal of one or more justices of the peace for the city and county of New-York, by distress and sale of the goods and chattels of the offender, upon due conviction upon oath, or upon the view of one or more of such justices of the peace, rendering the overplus (if any be) to the owner : And for want of such distress, the offender shall be imprisoned by warrant from the said justice or justices, who are hereby empowered and required to issue such warrant, until payment as aforesaid ; which said forfeitures shall be paid to the chamberlain of the city of New-York for the time being, for the use of the poor of the said city. Provided always, That it shall and may be lawful

Ship-chandlers may to and for such inhabitants of the said city, who are ship-chandlers, to have near their doors, in the open street, and in the street, pitch, tar, rosin and turpentine, not exceeding any one time, twenty barrels, in order the more readily and handily to supply the merchant-ships and others who may have occasion for small quantities of such commodities; any thing herein before contained to the contrary hereof in any wise notwithstanding.

II. *And be it further enacted by the authority aforesaid,* That if any person or persons, of what age, sex, or quality soever, from and after the said first day of June next, shall fire and discharge any gun, pistol, rocket, cracker, squib, or other fire-work, in any street, lane or ally, garden or other inclosure, or from any house, or in any other place where persons frequently walk, to the southward of fresh-water; that then every such person or persons so offending, and being thereof convicted before one or more justice or justices of the peace for the said city and county of New-York, either by the confession of the party or parties so offending, or the oath of one or more witness or witnesses (which oath the said justice or justices of the peace is and are hereby empowered and required to administer) shall, for every such offence, forfeit the sum of twenty shillings; the said forfeitures to be levied by distress and sale of the goods and chattels of every such offender, by warrant under the hand and seal of the said justice or justices of the peace before whom such conviction or convictions shall be as aforesaid made; which forfeiture shall be paid to the said chamberlain, for the use of the poor of the said city of New-York: And if the said offenders shall not pay the said forfeiture or forfeitures, upon conviction as aforesaid, and want of sufficient distress whereon the same can be made, that then every such justice or justices of the peace is and are hereby empowered and required, by warrant under his or their hands and seal, to commit every such person or persons, so as aforesaid offending, to the common gaol of the city and county of New-York, there to remain, without bail or mainprize, for the space of ten days, unless such forfeiture or forfeitures be sooner paid; but in case such offender or offenders in the premises last above mentioned, shall happen to be a slave or slaves, and the forfeiture or forfeitures aforesaid, shall not be forthwith paid, that then it shall and may be lawful to and for such justice or justices before whom the conviction shall be, to cause such slave or slaves to be publicly whipped on the naked back, such number of stripes as he or they shall think proper, not exceeding thirty-nine; which punishment shall be in lieu and stead of the said forfeiture.

C H A P. XLIV.

An ACT for keeping the Highway in that Part of the Manor of Rensselaerwyck, called the Colonie, in Repair.

Passed 22d April, 1786.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same That it shall and may be lawful to and for the overseers of the highway, to be elected in the manner herein after mentioned, respectively, from time to time, to direct all and every person and persons, being inhabitants of the part of the west district of the manor of Rensselaerwyck, lying to the north

ward of the city of Albany, and to the southward of Water Vliet, commonly called the Colonie, or holding any lots of ground in the same, to clear or clean the streets or highways directly opposite to the lots of ground owned or possessed by such person or persons respectively, to the middle of such streets or highways, and to remove all fire-wood, stones, or any other thing whatsoever, which may at any time be placed or conveyed on or into such part of any such streets or highways, which he, she or they, are hereby required to clear and clean, (the necessary materials for building any dwelling house only excepted :) And if any such person or persons, when thereunto required by the said overseers, or either of them, shall neglect or refuse for the space of three days, being so required, to clear and clean such streets, or to remove any fire-wood, stones, or other thing as aforesaid, the person or persons shall, for every day he, she or they shall so neglect or refuse, forfeit and pay the sum of three shillings, to be recovered and applied in the manner herein after directed.

II. *And be it further enacted by the authority aforesaid,* That each and every person, being an inhabitant of the said Colonie, shall, from time to time, within two months after notice shall be given to them respectively, by the said overseers, pave, or cause to be paved, with stones or pebbles, in such manner as the said overseers shall direct, opposite their respective lots of ground, the said streets or highways, not exceeding fifteen feet in breadth ; and that all and every person and persons, not being an inhabitant or inhabitants of the said Colonie, but holding or possessing any real estate, or lot of ground therein, shall, within two months after they shall be respectively required thereunto by any of the said overseers, lay with gravel in such manner as the said overseers shall direct, not exceeding fifteen feet, in the streets or highways opposite their respective real estates or lots of ground ; and if any person shall neglect or refuse to comply with the directions of any of the said overseers, respecting such paving, or laying the streets or highways with gravel, he or she so offending, shall forfeit and pay for every month he or she shall so neglect or refuse, the sum of twenty shillings.

III. *And be it further enacted by the authority aforesaid,* That the said overseers shall, from time to time, direct the said streets or highways to be levelled by the persons who are by this act compelled to clear or clean the same, in such parts as they are hereby respectively required to clear or clean the same, in such manner as to the said overseers shall appear most promotive of public convenience. And if any person shall neglect or refuse to comply with the directions of the said overseers, given in pursuance of this clause, he or she so offending, shall, for every month he or she shall so neglect or refuse, forfeit the sum of ten shillings.

IV. *And be it further enacted by the authority aforesaid,* That every person or persons, who shall ride or drive with any carriage, or horse or horses, through any of the said streets or highways, or any part thereof, so paved or gravelled as aforesaid, or in any other part of such streets or highways, faster than a common trot, shall, for every such offence, forfeit the sum of three shillings.

V. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the freeholders and inhabitants of the said Colonie, at their annual elections for town officers, yearly to elect two freeholders to be overseers of the highways, to carry this act into effect.

VI. *And be it further enacted by the authority aforesaid,* That every fine and penalty incurred in pursuance of this act, shall and may be sued for, and

recovered by the overseers aforesaid, in their names, before any justice of the peace of the county of Albany, and when so recovered shall be retained by the said overseers, to be applied to the special purpose of constructing bridges in the said Colonie, and after such bridges shall be completed, to improving and amending the said street or highways, in such manner as the said overseers shall, from time to time, deem proper.

C H A P. LIV.

An ACT to promote Literature.

Passed 29th April, 1786.

WHEREAS it is agreeable to the principles of natural equity and justice, that every author should be secured in receiving the profits that may arise from the sale of his or her works; and such security may encourage persons of learning and genius to publish their writings, which may do honor to their country and service to mankind.

I. Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That the

Authors of books and pamphlets to have the sole right of printing and publishing them, for 14 years.

author of any book or pamphlet, being an inhabitant or resident in these United States, and his or her heirs and assigns, shall have the sole liberty of printing, publishing and vending the same within this state, for the term of fourteen years, to commence from the day of its first publication in this state; and if any person or persons within the said term of fourteen years as aforesaid, shall presume to print or re-print any such book or pamphlet within this state, or to import or introduce into this state for sale, any copies of such book or pamphlet, re-printed beyond the limits of this state, or shall knowingly publish, vend, utter or distribute the same, without the consent of the proprietor thereof in writing, signed in the presence of two credible witnesses; every such person or persons shall forfeit and pay to the proprietor of such book or pamphlet, double the value of all the copies of such book or pamphlet so re-printed, imported, distributed, vendued or exposed for sale, to be recovered by such proprietor in any court of law in this state, proper to try the same.

Author's name and title of the book to be registered.

his or her name, as author, assignee or proprietor, with the title of such book or pamphlet, in the office of the secretary of this state, who is hereby empowered and directed to enter the same on record.

Author, if living at the expiration of the 14 years, entitled to the same privilege other 14 years.

II. And be it further enacted by the authority aforesaid, That at the expiration of the said term of fourteen years, in the cases above-mentioned, the sole right of printing and disposing of any such book or pamphlet in this state, shall return to the author thereof, if then living, and his or her heirs and assigns, for the term of fourteen years more, to commence at the end of the said first term; and that all and every person or persons who shall reprint, import, vend, utter or distribute in this state any copies thereof, without the consent of such proprietor obtained as aforesaid, during the said second term of fourteen years, shall be liable to the same penalties, recoverable in the same manner as is herein before enacted and provided.

III. And whereas it is equally necessary for the encouragement of learning, that the inhabitants of this state be furnished with useful books at reason-

able prices : *Be it further enacted by the authority aforesaid,* That whenever

How authors are to be compelled to furnish the public with sufficient editions of their works at reasonable prices. any such author or proprietor of such book or pamphlet, shall neglect to furnish the public with sufficient editions thereof, or shall sell the same at a price unreasonable, and beyond what may be adjudged a sufficient compensation for his or her labor, time, expences and risque of sale, any

one of the judges of the supreme court of judicature of this state, on complaint made thereof to him in writing, is hereby authorized and empowered to summon such author or proprietor, to appear at the next supreme court of judicature, and the said court are hereby authorized and empowered to enquire into the justice of the said complaint, and if the same be found true, to take sufficient recognizance and security of such author or proprietor, conditioned that he or she shall, within such reasonable time as the said court shall direct, publish and offer for sale in this state, a sufficient number of copies of such book or pamphlet, at such reasonable price as the said court shall, on due consideration, affix; and if such author or proprietor shall neglect or refuse to give such security as aforesaid, the said court are hereby authorized and empowered to give such complainant a full and ample license to re-print and publish such book or pamphlet, in such numbers and for such term as the said court shall judge just and reasonable : Provided, Such complainant shall give sufficient security before the said court, to afford such re-printed edition at such reasonable price as the said court shall thereto affix.

Penalty for printing and publishing manuscripts without consent of the author. IV. *And be it further enacted by the authority aforesaid,* That any person or persons who shall procure and print any unpublished manuscript, without the consent and approbation of the author or proprietor thereof first had and

obtained, if such author or proprietor be living, and resident in, or inhabitant of these United States, shall be liable to pay to the said author or proprietor, his or her damages for such injury, to be recovered with costs, by action brought on this act in any court of record. Provided always, That nothing in this act shall extend to affect, prejudice or confirm the rights which any person may have to the printing or publishing of any book or pamphlet, at common law, in cases not mentioned in this act; or to authorize any person or persons to print or publish any book, pamphlet or paper, that may be profane, treasonable, defamatory, or injurious to government, morals or religion. Provided also, That this act shall not extend or be construed to extend in favour, or for the benefit of any author or person residing in, or inhabitant of any other of the United States, until the state in which such person resides or dwells, shall have passed similar laws in favour of the authors of such new publications, and their heirs and assigns.

Trustees of the Dutch church at Flatbush, authorized to convey part of their real estate for erecting an academy. V. *And be it further enacted by the authority aforesaid,* That the trustees of the reformed protestant Dutch church of Flatbush, in the county of Kings, shall be, and they are hereby authorized to grant, bargain and sell, in fee simple, such part or parts of their real estate within the said county, to such person or persons, and for such price or prices, as they may think proper, for the express purpose of erecting an academy in the said county. Provided, That the quantity which the said trustees shall grant and convey by virtue of this act, shall not exceed six acres.

C H A P. LVIII.

‡ 7th sess. ch. 64. *An ACT further to amend an Act, entitled, † An Act for the speedy sale of the confiscated and forfeited Estates within this State, and for other Purposes therein mentioned.*

Passed 1st May, 1786.

[It was conceived to be unnecessary to print any other than the following clauses of this act, the rest being either expired, repealed, obsolete or private.]

II. **A**ND WHEREAS it is suggested to the legislature, that there are considerable tracts of land, and other real estate vested in the people of this state, by the conviction or attainder of divers persons, which have not yet been discovered by the commissioners of forfeitures: *Be it further enacted by the authority aforesaid,* That when any person or persons shall, after the passing of this act, discover to the commissioner or commissioners of forfeitures for any district of this state, any lands or other real estate vested in the people of this state, by the attainder or conviction of any person or persons whomsoever, it shall be lawful for such person or persons who shall make the discovery of any real estate as aforesaid, to locate the same in trust for the widow (if such attainted or convicted person be dead) and children, or children's children, if any such there be, or otherwise for the next of kindred of such attainted or convicted person, to be divided and distributed by the person or persons making such location, in the same manner, and with the like restrictions and limitations, as if such attainted or convicted person was dead intestate, and as if such lands or other real estate were personal estate, according to the law for the distribution of the personal estate of persons dying intestate. Provided always, That in case such attainted or convicted person be, at the time of such location, in full life, the wife of such attainted or convicted person shall have no share in the distribution to be made as aforesaid, but such distribution shall be made in the same manner as if such wife was also dead. And the commissioners of forfeitures of the district where such lands or real estate shall be situated, are hereby authorised and directed to have the same appraised at the value thereof in gold or silver, by appraisers to be appointed in the mode prescribed in and by an act, entitled,

† An act to liquidate and settle the accounts of the troops of this state, in the service of the United States, passed the fourth day of October, in the year of our Lord one thousand seven hundred and eighty. And upon the payment of such sum at which such lands shall be appraised, in any public securities receivable for forfeited estates, to make, seal and deliver a conveyance for the same, to such person or persons, and his or their heirs, in manner and form as is prescribed in and by the act aforesaid, upon the trust nevertheless herein before expressed; for the better execution whereof, the person or persons to whom such conveyance may be made, his, her or their heirs, shall have full power and authority to sell the lands and other real estate, to him, her or them respectively conveyed, in such manner as to him, her or them shall appear most for the advantage of the persons entitled to distribution as aforesaid. Provided also, That none of the conveyances to be given as aforesaid, shall operate as a warranty from the people of this state, for the real estate or estates so to be conveyed.

V. *And be it further enacted by the authority aforesaid,* That if any person who shall become a purchaser of any confiscated estate, shall neglect or refuse when demanded, to deposit one third of the purchase money, in the manner prescribed in and by the act, entitled, An act for the speedy sale of the confiscated and forfeited estates within this state, and for other purposes

therein mentioned ; the commissioner or commissioners who shall make such sale, shall and may, within twenty days thereafter, again expose such confiscated estate to sale at public vendue ; and if upon such second sale, such confiscated estate shall not be sold for a sum equal to the sum which such purchaser offered on the first sale thereof, the commissioner or commissioners shall and may recover in his or their own name or names, of such first purchaser, in an action of debt in any court of record in this state, the sum which the sum contracted for on such second sale, shall be less than the sum offered at the first sale thereof, with costs : and in every such action the defendant shall be held to bail in double the sum demanded.

VII. *And be it further enacted by the authority aforesaid,* That it shall be, and is hereby made the duty of the commissioners of forfeitures, in every advertisement of the sale of lands and tenements by them to be made, to insert a description of the several certificates made receivable by this act, in payment for the said lands and tenements.

X. *And be it further enacted by the authority aforesaid,* That in all cases of purchases made of any forfeited estates, in pursuance of any of the laws directing the sale of forfeited estates, in which any purchaser of such estates shall be evicted by due course of law, in the manner mentioned in the first enacting clause of the act, entitled, An act for the speedy sale of the confiscated and forfeited estates within this state, and for other purposes therein mentioned, such purchaser shall have the like remedy for obtaining a compensation for the value of improvements by him or her made, on such estate so by him or her purchased, and from which he or she shall be so evicted, as is directed in and by the said first enacting clause of the said act.

XIII. And whereas by an act, entitled † An act to amend
 † 8th sess. ch. 49. an act, entitled, An act for the speedy sale of the confiscated and forfeited estates within this state, and for other purposes therein mentioned, it is enacted, That in all sales of forfeited estates to be made by the commissioners of forfeitures, to any person or persons whatsoever, after the passing of that act, such person or persons so purchasing, shall immediately pay to the said commissioner or commissioners, one third part of the said purchase-money, and the remaining sum due, within nine months from the time of such sale. And whereas it is conceived that the time given for the payment of the said two third parts of the purchase-money is too long ; Therefore, *Be it further enacted by the authority aforesaid,* That every person who shall hereafter purchase any forfeited estate or estates, shall immediately pay to the commissioner or commissioners making such sale, one third part of the purchase-money, and the remaining sum in four months from the time of such sale. And the commissioners of forfeitures are hereby required to take the security directed by the said act to be given for the same accordingly.

XIV. *And be it further enacted by the authority aforesaid,* That in all cases where any person hath, or hereafter shall purchase any lands, tenements or hereditaments, forfeited to the people of this state, and any such lands, tenements or hereditaments hath been, or shall be recovered against such purchaser, his heirs or assigns, by due course of law, then, and in every such case, it shall be lawful for the person against whom such recovery is or shall be had, to locate any other forfeited estate to the amount of the sum paid to the people of this state, for the lands, tenements or hereditaments so recovered, according to the directions prescribed in and by an act, entitled, An act to liquidate and settle the accounts of the troops of this state, in the service

of the United States, passed the fourth of October, one thousand seven hundred and eighty. And the commissioners of forfeitures for the district where such location shall be made, are hereby authorized and required to have the same appraised, at the value thereof in gold and silver, in the manner prescribed in and by the said last mentioned act, and to convey to such person or persons, and his, her or their heirs, so much of the said lands so located, as, according to such appraisement, shall amount to the sum so paid for the land so recovered. Provided always, That every person making such location, shall, at the time of making the same, produce and deposit with the commissioner of forfeitures, the deed from the commissioners of forfeitures for the land so recovered, and a certificate from the attorney-general of this state for the time being, that such recovery was had for want of title in the people of this state. And provided also, That it shall and may be lawful for any such person, against whom any such recovery hath been or shall be had as aforesaid, at his election, instead of locating as aforesaid, to receive a certificate from the treasurer of this state for the sum paid for the lands so recovered. And the treasurer of this state for the time being, is hereby authorized and required, upon producing and depositing with him the original deed from the commissioners of forfeitures, for the land so recovered, and such certificate from the attorney-general as aforesaid, to give such person a certificate or certificates for the sum so paid as aforesaid, which shall be of like value and effect as the certificate or certificates paid for the land so recovered. Provided always, That if any such appraisement shall exceed the amount of the principal and interest of such certificate or certificates, the surplus shall be paid in gold or silver, before any conveyance be given for any lands so located.

XXIV. And whereas doubts have arisen respecting the title of the people of this state, to a certain house and lot in Wall-street, in the city of New-York, now possessed by Ann White, the widow of Thomas White, late of the city of New-York, deceased, an attainted person : And whereas the said house and lot has been located by Charles M'Knight, of the city of New-York, Physician ; *Be it therefore enacted by the authority aforesaid,* That the like relief shall be extended to the said Charles M'Knight, as is by this act extended to Abraham Bloodgood ; and the commissioners of forfeitures for the southern district are hereby required to stay the sale of the said house and lot, until the further order of this legislature.

XXIX. *And be it further enacted by the authority aforesaid,* That all negro slaves become the property of the people of this state, by the attainder or conviction of any person whomsoever, and now in possession of the commissioners of forfeitures, be, and they are hereby manumitted.

XXX. *And be it further enacted by the authority aforesaid,* That the commissioners of forfeitures for the several districts be, and they hereby are required to provide for the comfortable subsistence of all such slaves so forfeited in their respective districts, as by age or infirmity are become unable to gain subsistence, at the expense of the people of this state.

XXXI. And whereas there are supposed to be sundry mortgages on the forfeited estates of Philip Skeene and Andrew Skeene, at Skeensborough, the amount whereof cannot be ascertained, as the records of the county of Washington, late county of Charlotte, have hitherto not been found, but are supposed to be in Canada. And whereas his excellency the governor is requested to pursue measures for the recovery of the said records : Therefore, *Be it enacted by the authority aforesaid,* That the commissioner of for

seitures for the eastern district shall be, and he is hereby required to stay the sale of the said forfeited estates, until the said records shall be recovered, and lodged with the clerk of the county of Washington, or until his excellency the governor shall advise the said commissioner that the said records cannot be obtained, or until the further order of the legislature.

C H A P. LXIV.

† 9th sess. ch. 40. *An ACT supplementary to an Act, entitled, † An Act for emitting the Sum of Two Hundred Thousand Pounds in Bills of Credit for the Purposes therein mentioned.*

Passed 5th May, 1786.

WHEREAS the county of Albany has, † since the passing of the act, entitled, An act for emitting the sum of two hundred thousand pounds in bills of credit, for the purposes therein mentioned, been divided into two counties, by the names of Albany and Columbia; Therefore,

I. *Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That the bills of credit to be emitted in pursuance of the said act, and assigned for loan to the county of Albany, and all and every proceedings by virtue of the said act, respecting the loan of the said bills, assigned as aforesaid, to the county of Albany, shall be lent and had in like manner as if the act, entitled, † An act dividing the county of Albany into two counties, had not passed.

Regulating the loan of Money in Albany county.

† 9th sess. ch. 28.

II. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the judges of the inferior courts of common pleas, and supervisors of the several counties, who shall not have appointed loan-officers in pursuance of the directions of the said act, on the day for that purpose mentioned in the said act, to make such appointments on the last Tuesday of May instant.

Loan officers when to be appointed in certain cases.

C H A P. LXVI.

An ACT for the Payment of certain Sums of Money, and for other Purposes therein mentioned.

Passed 5th May, 1786.

[It was conceived unnecessary to print any other than the following clauses of this act, the rest being either obsolete or private.]

W. *AND be it further enacted by the authority aforesaid,* That it shall be, and it is hereby made the duty of the late commissioners of sequestration, and of all other persons possessing books, papers, bonds, notes, or other evidences of debts due from any person or persons, to any estate or estates forfeited to the people of this state, to deliver the same to the treasurer of this state without delay. And it is hereby made the duty of the treasurer to receive such books, papers, bonds, notes, or other evidences of debts due as aforesaid; and on neglect or refusal of any person or persons in whose possession such books, papers, bonds, notes or other evidences of debts shall be, to deliver the same, the said treasurer is hereby directed to prosecute the

† This is a mistake, the act for dividing the county of Albany was first passed.

person or persons so neglecting or refusing, in an action of debt or detinue, in his own name, in any court of record within this state, having cognizance of the same.

XXIX. And whereas the corporation of the Marine Society of the city of New-York, in the province of New-York, in America, have, by their petition to the legislature, setting forth, that in consequence of the late happy revolution, several terms in the stile and name of the corporation, are become improper, humbly praying, that the stile and name of the said corporation may be altered : Therefore, *Be it enacted by the authority aforesaid*, That the stile and name of the said corporation, shall be altered from the present stile and name, to the stile and name of, The Marine Society of the city of New-York, in the state of New-York ; and that the said society shall, from and after the passing of this act, be known by such stile and name as last mentioned, and not by the stile or name expressed in their charter of incorporation.

C H A P. LXVII.

See 12th sess. ch. 32. *An ACT for the speedy Sale of the unappropriated Lands*
 sec. 14. and
 14th sess. ch. 42. *within this state, and for other purposes therein mentioned.*

Passed 5th May, 1786.

WHEREAS experiment has evinced, that the settlement of the unappropriated lands in this state, in the manner directed by former acts, is subject to great embarrassment and inconvenience, and productive of controversy ; for prevention whereof,

I. *Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same*, That his excellency the governor, or person administering the government of this state for the time being, the lieutenant governor, the speaker of the assembly, the secretary of the state, the attorney-general, the treasurer and the auditor of this state, respectively, for the time being, shall be, and they hereby are appointed commissioners of the land-office, to direct the disposing and granting of the unappropriated lands within this state, according to such powers and directions as shall, from time to time, be prescribed by the legislature ; and all and every of the powers and trusts to be vested in them by this or any future act, shall and may be lawfully executed by any three of them, the governor, or person administering the government of this state for the time being, to be always one, and that the secretary of this state shall, ex officio, always be the secretary of the said commissioners.

II. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful to and for the said commissioners, and they are hereby authorized from time to time, to direct and require the surveyor-general of this state, for the time being, to cause actual survey of the out-lines of all such of the waste and unappropriated lands of this state, as they shall deem proper for sale, and most promotive of the interest of this state, to be made. Provided always, That the said commissioners, whenever they shall think proper, may direct the surveyor-general to lay down on a map, any tract of land for sale, without proceeding to the survey of the out-lines thereof.

Out lines to be run previous to the sale.

But commissioners may direct lands to be sold without such survey.

See 10th sess. ch. 103. sec. 2.

Lands to be laid out in townships.

III. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful to and for the said commissioners, and they are hereby required, from time to time,

to direct the surveyor-general to lay each and every of the tracts directed to be laid out by the said commissioners, into townships, on a map to be by him made; each township to contain, as nearly as may be, sixty-four thousand acres of land, and as nearly in squares as local circumstances will permit.

IV. *And be it further enacted by the authority aforesaid,* That the said surveyor-general, where any township shall include lands heretofore granted under the great seal of the late colony of New-York, or under the great seal of this state, or which may have been located as bounty lands, by virtue of any law of this state, or shall have been granted or determined to be granted by the said commissioners on equitable claims, shall lay down the same on the map thereof, and the unappropriated lands in such township or townships only shall be sold in manner hereinafter directed.

V. *And be it further enacted by the authority aforesaid,* That the said surveyor-general, as soon as may be, shall make a map of such tracts so intended for sale, on which shall be laid out the townships contained therein, which townships shall be numbered, from number one progressively, to the last inclusive; and each township shall, on such map, be subdivided into lots, as nearly square as may be, and each lot to contain six hundred and forty acres, or as nearly so as may be, and the lots in each township shall be numbered, from number one to the last inclusive, in arithmetic progression, and on every fourth township in such map, shall be written, *To be sold by single lots*; and one copy of such map shall be filed in the office of the secretary of this state, and the original thereof in the said surveyor-general's office; and the said secretary and surveyor-general respectively, shall cause the maps so to be filed, to be put up in some conspicuous part of their respective offices, and shall permit any person whatever freely to inspect such maps, between the hours of nine and twelve in the morning, and three and six in the afternoon of every day, Sundays only excepted, on paying for inspection in morning, six-pence, and the like in the afternoon.

VI. *And be it further enacted by the authority aforesaid,* That the said surveyor-general shall, immediately after having notified the sale of lands, file such map as aforesaid in the secretary's office, give notice thereof by public advertisement, to be published in at least three of the newspapers printed in this state, and shall, in the said advertisement, mention and appoint a day certain, not more than forty, nor less than thirty days from the day on which such advertisement shall be first published, on which day he will commence the sale of the said lands at public vendue, to the highest bidder, and shall also mention in such advertisement, the place where such vendue will be held.

VII. *And be it further enacted by the authority aforesaid,* That at every such sale, the said surveyor-general shall put up to sale, as nearly as may be, one quarter part of the unappropriated and unreserved lands in every township, in lots contiguous to each other, and shall strike off the same to the highest bidder, with a reservation of five acres of every hundred acres so sold, for highways, and shall continue to sell in such quarter parts until the whole of such townships are sold. *Provided,* That none of the lands so laid out shall be sold at a less price than one shilling per acre. *And, Provided also,* That the first fourth township to be sold shall be sold by single lots only, and not otherwise.

VII. *And be it further enacted by the authority aforesaid,* That every purchaser shall, immediately after having made his purchase, pay unto the said

surveyor-general, one fourth part of the purchase-money; and having paid the same, the surveyor-general shall give unto such purchaser, a certificate, containing such a description of the bounds of the land purchased, as that the same may be inserted in the letters patent to be granted therefore, and shall endorse on such certificate the sum by him received, and also the sum still due on such purchase. And if the purchaser shall not, within sixty days next after the date of such certificate, pay the sum so still due to the treasurer of this state, the purchase made by every such delinquent purchaser shall be, and hereby is declared null and void, and the money so paid shall be forfeited to the use of the people of this state; but if the sum so remaining due shall be paid to the said treasurer within the time herein limited, he shall endorse a receipt therefore on the said certificate. Provided always, That none of the interest arising on any public securities with which such sum so unpaid shall be discharged, and which shall have accrued subsequent to the date of such certificate, shall be allowed by the said treasurer. And provided also, That if any purchaser shall not, immediately after such purchase, pay the said one fourth part, the said surveyor-general shall, at the same vendue, again expose the lands so purchased, to sale; and every purchaser who shall refuse or neglect, for the space of twenty-four hours next after such purchase, to pay the said one fourth part, shall forfeit to the people of this state, the sum of twenty pounds, to be sued for and recovered by the said surveyor-general, in his own name, in any court of record within this state; and such purchase shall be, and hereby is declared to be null and void.

IX. *And be it further enacted by the authority aforesaid,* That if any purchaser, by himself or herself, or his or her legal representative, shall produce such certificate with such receipt as aforesaid endorsed thereon, to the said commissioners, it shall and may be lawful to and for the said commissioners to direct letters patent to be prepared and issued for granting the lands described in such certificate, to the purchaser thereof, or to the purchaser and such other person or persons, as he shall, under his hand and seal, signify to be concerned in the purchase so by him made in the manner herein before mentioned.

X. And whereas a tract of land, commonly called Jessup's purchase, was heretofore laid out into townships of six miles square, and into tracts of less dimensions, a great part whereof remains unpatented; *Be it therefore enacted by the authority aforesaid,* That it shall and may be lawful to and for the said commissioners, to direct the surveyor-general to sell all or any of the said townships and smaller tracts remaining unpatented, in such parts and parcels as they shall direct; and the said surveyor-general shall advertise, sell and certify the same, in manner herein before directed; and the treasurer shall endorse on every such certificate, on payment of the purchase-money, and letters patent shall pass for the same as herein before directed.

XI. *And be it further enacted by the authority aforesaid,* That in every township so laid out, or to be laid out as aforesaid, the surveyor-general shall mark one lot on the map, *gospel and schools*, and one other lot, *for promoting literature*, which lots shall be as nearly central in every township as may be; and the lots so marked shall not be sold, but the lot marked, *gospel and schools*, shall be reserved for and applied to promoting the gospel and a public school or schools in such township; and the lot marked, *for promoting literature*, shall be reserved to the people of this state, to be hereafter applied by the legislature for promoting literature in this state.

XII. *And be it further enacted by the authority aforesaid,* That the said surveyor-general shall, within thirty days next after the sale of any of the lands herein before directed to be sold by virtue of this act, make return of every such sale to the treasurer of this state; and if the purchasers, or some other persons on their behalf respectively, do not pay the purchase-money due on the sale, within the time or times herein before limited, the said treasurer shall transmit to the said surveyor-general, the name of every delinquent purchaser; and the surveyor-general shall thereupon advertise all the lands so sold and not paid for, to be again sold at a time and place in such advertisement to be mentioned, and in manner aforesaid.

Commissioners to name the townships. XIII. *And be it further enacted by the authority aforesaid,* That the said commissioners shall designate every township to be laid out by virtue of this act, or which is already laid out, by such name as they shall deem proper; and such name shall respectively be mentioned in the letters patent for granting a township, or part of a township.

Lands which may be located. XIV. *And be it further enacted by the authority aforesaid,* That all lands for which letters patent have at any time heretofore been granted, and which have since been vacated by laws of the late colony of New-York, all lands having been so granted, and which have been resigned to the crown of Great-Britain, whilst this state was a colony, and not re-granted, are hereby declared lands on which locations might have been and may hereafter be legally made.

XV. And whereas by virtue of acts heretofore passed for granting bounty lands, sundry locations have been made on lands belonging to the Onondaga, Cayuga and Seneca nations of Indians: And whereas an attempt to settle such lands by the persons entitled to letters patent therefore, by virtue of the said acts, may involve this state in a disagreeable controversy with the said Indians: Therefore, *Be it enacted by the authority aforesaid,* That it shall

Permission granted to withdraw locations, & to locate elsewhere and may be lawful to and for any person having made such location as aforesaid, to withdraw such location, and each and every of them are hereby authorized to locate on any of the lands to be sold by virtue of this act, excepting

See 12th sess. ch. 44, se. 11. on the lands purchased from the Oneida Indians as aforesaid; and to receive from the said surveyor-general a certificate of such location, directed to the said commissioners, who shall thereupon direct letters patent to be prepared; and having approved the same, the governor, or person administering the government of this state for the time being, shall cause the great seal of this state to be affixed thereto: Provided, That locations to be made for any bounty lands, in pursuance of any law of this state, shall not be made on any lands directed to be laid out for sale by the said commissioners, after such lands shall have been directed by the said commissioners to be set apart for sale, unless such locations shall be made for any whole lots, or number of whole lots into which any township shall be subdivided. And provided also, That no such locations, or grants in consequence of such locations, shall be made for any lands included in the purchase made of the Indians by the people of this state, on the twenty-eighth day of June, the year of our Lord one thousand seven hundred and eighty-five.

Lands in Southern district not to be located or granted. XVI. *And be it further enacted by the authority aforesaid,* That none of the vacant and unappropriated lands within this state, and which lay in the southern district thereof, shall be located or granted by virtue of this act, or any clause thereof.

XVII. *And be it further enacted by the authority aforesaid,* That it shall be lawful for any person (who shall heretofore have made any location for bounty lands, or who shall hereafter make a location for such lands, and whose locations have not been, or hereafter shall not be allowed of by the said commissioners, or the surveyor-general) to locate on any of the vacant and unappropriated lands, subject to location for bounty lands, in and by this act.

XVIII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said commissioners to grant such and so much of the lands under the water of navigable rivers, as they shall deem necessary to promote the commerce of this state. Provided always, That no such grant shall be made in pursuance of this act to any person whatever, other than the proprietor or proprietors of the adjacent lands. And provided also, That every applicant for such grant shall, previous to his or her application, give notice thereof, by advertisement, to be published in one of the newspapers printed in this state, for six weeks successively, and shall cause a copy of such advertisement to be put up at the court-house of the county in which the lands lay, so intended to be applied for, and if there be no court-house in the county, then at such place at the said commissioners shall direct.

Where improvers of unappropriated lands to have a grant for 200 acres.

See 11th sess. ch. 89. sec. 2.

12th sess. ch. 44. sec. 13.

XIX. *And be it further enacted by the authority aforesaid,* That where any person is now in the actual possession of any of the said unappropriated lands, and hath been so possessed, prior to the twenty-fifth day of July, one thousand seven hundred and eighty-two, and hath made improvements thereon, it shall and may be lawful for the commissioners aforesaid, to grant to every such person, in fee simple, a farm not exceeding two hundred acres, including such improvements, upon such persons paying as aforesaid one shilling an acre for the same. Provided always, That the person so in possession is the original settler, or the heir or legal representative of such original settler, or shall have purchased such improvements from the original settler, or from his legal representatives, and that such original settler did not go off, or join the then enemies of this state during the late war. And, Provided also, That such person shall make application to the said commissioners for such grant within six months after the passing of this act.

Time of application.

Further time given,
11th sess. ch. 89. sec. 1.
12th sess. ch. 44. sec. 13.

Lands granted to Church and others.

XX. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the said commissioners to appropriate a tract of land, equal to eight miles square, in any of the townships to be laid out in pursuance of this act, for the use of colonel Timothy Church, major William Shattuck, and major Henry Evans, and such other persons of the counties of Cumberland and Gloucester, as shall be deemed by the said commissioners to be sufferers in opposing the government of the pretended state of Vermont, and to grant the land in such township, in such proportion to each of such sufferers, as to the said commissioners shall seem meet and proper, and to direct letters patent to be prepared accordingly; and having approved of the same, the governor, or person administering the government of this state for the time being, shall cause the great seal of this state to be affixed thereto.

XXI. And whereas by the act, entitled, † An act to prevent grants or locations of the lands therein mentioned, passed the 25th of July, 1782, a certain tract of land was set apart for the

† 6th sess. ch. 11.

use of such of the inhabitants of this state as had served in the army of the United States : And whereas from sundry circumstances which have intervened since the passing of the said act, the lands so intended to be granted would be of little use to the said inhabitants having so served : Therefore,

Lands set apart for the army. See 11th sess. ch. 89. sec. 3. 12th sess. ch. 44. and 13th sess. ch. 59. *Be it enacted by the authority aforesaid,* That the said commissioners shall be, and they are hereby authorized to direct the surveyor-general to lay out the following tract of land, to wit : Beginning at a certain point in the north bounds of Jessup's purchase, thirty miles distant from the north-east corner of two certain tracts of land granted to Philip Skeene, by letters patent, bearing date the sixth day of July, one thousand seven hundred and seventy-one, and running thence north to the north bounds of the state, thence easterly along the same twenty miles ; thence south to the north bounds of Jessup's purchase aforesaid, continued easterly thence to the place of beginning : All which tract of

To be laid out in land shall, on a map thereof to be made by the surveyor-townships. general, be laid out into townships of ten miles square ; and each township shall, on the said map, be numbered ; and the commissioners shall thereupon, from time to time, devise such regulations for laying out lots of such dimensions as they shall think proper, for satisfying out of the said tract of lands, such claims of all such persons who are or shall be entitled to grants of lands by virtue of the tenth, eleventh and fourteenth clauses of the act, entitled, An Act for granting certain lands promised to be given as bounty lands by laws of this state, and for other purposes therein mentioned, or such of them as are still unsatisfied, as to the said commissioners shall appear best calculated to enable the persons holding such rights, to participate as equally as may be in the advantages derived from locating the said lands to which they shall be respectively entitled. Provided, That all persons claiming such rights, and who have not already exhibited their claims, shall exhibit their respective claims to the said commissioners, on or before the first day of January next, or shall be precluded from the same.

XXII. *And be it further enacted by the authority aforesaid,* Canadian refugees relieved. That it shall and may be lawful to and for the said commissioners to appropriate a tract of land in or adjoining to the land set apart in and by this act, for the use of persons entitled to grants for military services, not exceeding in quantity six thousand acres, to be divided between such refugees, who, during the late war, or since, have come from Canada, and who, in the opinion of the said commissioners, may be entitled to the bounty of this state, or of the United States, and who are not provided for by any law of this state.

XXIII. *And be it further enacted by the authority aforesaid,* That on the lands to be granted by this act, or any former act, there shall be an actual settlement made for every six hundred and forty acres which may be granted to any person or persons, within seven years from the first day of January next after the date of the patent, by which such lands shall be granted, and on failure of such settlement, the unsettled lands shall revert to the people of this state ; any thing in this act to the contrary notwithstanding.

Claims to be void on claimants not suing out letters patent. XXIV. *And be it further enacted by the authority aforesaid,* That where equitable claims have heretofore been allowed of by the commissioners appointed by former acts, and the claimant or claimants have not sued out letters patent, the claim or claims of such claimant or claimants shall be null and void, unless he, she or they shall, within sixty days next after the passing of this act, or if such claim shall here-

after be allowed in pursuance of any law of this state, within sixty days after the allowance thereof, pay the purchase-money, at the rate of one shilling per acre, into the treasury of this state; and shall, within forty days next after the expiration of the said sixty days, sue out letters patent therefore, and pay all the charges accrued on such claim or claims.

XXV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said commissioners to direct letters patent to be prepared and granted in manner aforesaid, to grant to James Deane, his heirs and assigns, in fee simple, the following tract of land, to wit: Beginning at a certain place where the west line of the patent of Coxborough crosses the stream or brook, formed by the junction of the streams or brooks called Kanaghtarageara and Kanyonskotta, it being one of the branches of the Oriskany creek or river, running thence north twenty-four degrees and thirty minutes west, forty chains; thence south sixty-five degrees and thirty minutes west, one hundred and sixty chains; thence south twenty-four degrees and thirty minutes east, one hundred and sixty chains; thence north sixty-five degrees and thirty minutes east, one hundred and sixty chains; thence on a direct line to the place of beginning: And to Abraham Wemple, his heirs and assigns, in fee simple, six hundred and forty acres, in a square, next adjoining to, and on the south side of the tract to be granted to James Deane aforesaid: To Samuel Kirkland, the quantity of six hundred and forty acres, in a square, to be bounded on the tract to be granted to the said James Deane, and on the tract to be granted to the said Abraham Wemple: One moiety whereof, in fee simple, to the said Samuel Kirkland, and the other moiety to the said Samuel Kirkland, in trust for any minister of the gospel, who may hereafter, for the time then being, be employed by the Oneida Indians, to preach the gospel among them.

XXVI. *And be it further enacted by the authority aforesaid,* That the commissioners and the secretary shall respectively be entitled to the following fees, for the services performed or to be performed by them respectively, by virtue of the acts, or any of them herein after in part repealed, or to be performed by virtue of this act, and to be paid by the person or persons in whose favor any letters patent shall issue; that is to say, To the governor for his attendance on signing and affixing the great seal to letters patent, the sum of three pounds four shillings for a whole township; the sum of two pounds eight shillings for three quarters of a township; the sum of one pound twelve shillings for half or one quarter of a township, and the sum of sixteen shillings for any less quantity. And the others of the said commissioners jointly, exclusive of the secretary, shall be entitled to take and receive a sum equal to one half of the fees allowed to be taken by the governor by virtue of this act, on the issuing of each patent, to be divided, between them, in such proportion as to a majority of them shall seem proper: To the secretary for preparing the letters patent, recording and keeping the minutes of the said commissioners, the like fees as allowed to the governor by virtue of this act.

XXVII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the said surveyor-general to receive and take the fees herein after mentioned, for all services performed in the office of surveyor-general, previous to the first day of May, one thousand seven hundred and eighty-five, for the benefit of the said surveyor-general and his predecessor in office, to wit: For filing every certificate, transfer, endorsement or location, at and after the rate of one shilling for each and every of them so filed; for his warrant of survey; for entering a copy thereof; for

entering the return of survey ; for his certificate to the said commissioners ; or copy of any certificate, transfer, endorsement or location ; for copy of any caveat, and for every other writing which may be required of him, at and after the rate of two shillings for every one hundred and twenty-eight words.

XXVIII. And whereas it is deemed expedient that the said surveyor-general should have a fixed salary in lieu of all other fees which may arise in his office, for services performed subsequent to the said first of May, 1785, or hereafter to be performed : Therefore, *Be it enacted by the authority aforesaid,* That the salary of the surveyor-general for the time being, shall be at and after the rate of four hundred pounds per annum, to commence from the first day of May, one thousand seven hundred and eighty-five, for and during the term of three years ; and that the said surveyor-general shall receive the like fees as mentioned in the next preceding clause of this act, for all and every paper by him to be filed, or copies to be given out of his office, and shall account for the monies arising from the fees directed to be by him received in pursuance of this act, or which he may have heretofore received, or may hereafter receive for services by him performed after the first day of May last aforesaid, once in every year, to the auditor of this state, and shall pay the same to the treasurer of this state.

XXIX. *And be it further enacted by the authority aforesaid,* That all letters patent hereafter to be granted, shall be in such words and forms as the said commissioners shall direct, and shall contain an exception and reservation to the people of this state, of all gold and silver mines, and shall vest the lands in fee simple.

Allowances by the surveyor-general.

This section repealed, 10th sess. ch. 103, sec. 2.

XXX. *And be it further enacted by the authority aforesaid,* That the following allowances shall, by the surveyor-general, be made to persons employed by him, to carry into effect the duties enjoined him by this act, to wit : For a deputy-surveyor, a sum not exceeding twenty shillings per day, and two shillings for a horse to carry the baggage of himself and the persons employed with him : That each deputy so employed shall be allowed two chain-bearers, two markers, one flag-carrier, and a man to attend the baggage-horse ; to each of which there shall be allowed a sum not exceeding six shillings per day ; and that the said deputies, chain-bearers, flag-carrier, markers and attendant, shall furnish themselves with provisions, and the necessary implements, at their own expence.

Species of monies payable for lands.

See 11th sess. ch. 89, sec. 10.

XXXI. *And be it further enacted by the authority aforesaid,* That gold and silver, and every species of bills of credit or public securities now receivable, or which shall hereafter be made receivable in payment for forfeited estates, shall and may be received in all payments to be made in pursuance of this act, at the rates they are respectively receivable for forfeited estates.

George Klock and others permitted to locate 40,000 acres.

XXXII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for George Klock, and Jacob G. Klock, now or late of the county of Montgomery ; Hendrick Remsen, now or late of the city of New-York ; and John Var. Sice, now or late of the county of Albany, or their respective legal representatives, jointly, to locate the quantity of forty-eight thousand acres of land, out of any of the ungranted, unappropriated or unlocated lands in the county of Montgomery, part and parcel of the lands alledged to have been conveyed unto them by a certain deed, bearing

date the twenty-eighth day of May, one thousand seven hundred and sixty-six, and now remaining of record in the office of the secretary of this state. Provided always, That such location shall be in one entire piece or parcel, if so much can be so located, and if not, then to locate the greatest possible quantity of such land in one piece, and the residue in one or more pieces, each to contain not less than eight thousand acres. And, provided also, That such location or locations be made within sixty days next after the day of passing of this act; and that the said George Klock, Jacob G. Klock, Hendrick Remsen and John Van Sice, or their legal representatives, shall cause the lands so by them to be located, to be surveyed in manner directed by this act, and being so surveyed, shall produce the surveyor-general's certificate, to be granted in manner herein before directed, with a receipt endorsed thereon by the treasurer of this state, specifying, that the sum of one shilling per acre for every acre mentioned in such certificate has been paid; then the said commissioners shall cause letters patent to be prepared for granting the said lands, and having approved thereof, the governor shall affix the great seal of this state thereto.

XXXIII. And whereas Baron Frederick William Steuben, late a major-general in the army of the United States, has rendered very essential service to this state, as one of the United States, by introducing a regular discipline in the army, and a spirit of œconomy in the interior administration of the regiments; and this legislature being willing to afford a public testimony of the just sense they entertain of his services: Therefore, *Be it enacted by the authority aforesaid,* That the said commissioners shall, and they are hereby

16,000 acres of land
given to major general
Steuben.

authorised to direct letters patent to be prepared for granting to the said Baron Frederick William Steuben, in fee simple, one quarter of a township, equal to sixteen thousand acres of land, part of any township which he may chuse, out of the townships to be laid out in any of the tracts of land directed to be laid out in pursuance of this act, except in the bounds of the said lands purchased of the Oneida Indians, without fee or reward, or paying any consideration for the lands so to be granted to him; and having approved of such letters patent, his excellency the governor shall affix the great seal of this state thereto.

XXXIV. And whereas by the sixteenth section of the act, entitled, An act for granting certain lands promised to be given as bounty lands by laws of this state, and for other purposes therein mentioned, the surveyor-general was directed to make a subdivision of the lands set apart for the Canadian and Nova-Scotia refugees, into lots of two hundred and fifty acres each. And whereas the laying out of such lots to the Canadian and Nova-Scotia refugees as aforesaid, may not in all cases tend to promote a speedy settlement of the said lands; for remedy whereof, *Be it further enacted by the authority*

Commissioners to sub-
divide lots of Canadian
and Nova-Scotia
refugees, as may to
them seem proper.

aforesaid, That whenever it shall appear to the commissioners of the land-office, that a deviation therefrom will be beneficial to this state, by promoting a more speedy and effectual settlement of the said lands, it shall and may be lawful for the said commissioners to direct a subdivision of such lots, in manner and form as to them shall seem proper, at the expence of those interested in such subdivisions. Provided always, That nothing in this act contained, shall be construed to affect, or in any wise annul the proceedings heretofore had by the commissioners in favor of the Canadian or Nova-Scotia refugees so far as respects the quantity of lands already set apart for them.

XXXV. *And be it further enacted by the authority aforesaid,*
 That all lands that have been granted by letters patent, under the great seal of this state, or that shall be so granted, by virtue of this act, shall be and hereby are exempted, until the expiration of seven years from the issuing of such grants, from all taxes hereafter to be imposed upon the inhabitants of this state, except county and district taxes.

XXXVI. *And be it further enacted by the authority aforesaid,* That the first, second and third clauses, and the proviso annexed to the said third clause, in the act, entitled, (a) 6th sess. ch. 11. (a) An act to prevent grants or locations of the land therein mentioned, passed the 25th of July, 1782; and the eighth, (b) 7th sess. ch. 63. ninth and twelfth clauses of the act, entitled, (b) An act for granting certain lands, promised to be given as bounty lands by laws of this state, and for other purposes therein mentioned, passed the 11th of May, 1784; the act, entitled, An act to encourage the settlement of the waste and unappropriated lands in this state, passed the 10th of May, 1784, and the act, entitled, An act to facilitate the settlement of waste and unappropriated lands within this state, and for repealing the act therein mentioned, passed the 11th day of April 1785, shall be, and hereby are repealed.

LAW S of the State of NEW-YORK,

Passed in the Tenth Session of the Legislature, held in the City of New-York.

C H A P. I.

An ACT concerning the Rights of the Citizens of this State.

Passed 26th January, 1787.

BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted and declared by the authority of the

same : First, That no authority shall, on any pretence whatsoever, be exercised over the citizens of this state, but such as is or shall be derived from and granted by the people of this state.

Second, That no citizen of this state shall be taken or imprisoned, or be disseised of his or her freehold, or liberties; or free customs; or outlawed, or exiled, or condemned, or otherwise destroyed, but by lawful judgment of his or her peers, or by due process of law.

Third, That no citizen of this state shall be taken or imprisoned for any offence, upon petition or suggestion, unless it be by indictment or presentment of good and lawful men of the same neighborhood where such deeds be done, in due manner, or by due process of law.

No person to be put to answer without presentment, or process.

No person to be imprisoned, put to death &c. without being brought to answer; nor be put out of his franchise or freehold, or lose his life or limb, or goods and chattels, unless brought to answer, and be fore-judged of the same.

Justice shall not be sold, denied or delayed. Writs and process to be granted freely, and all fines thereon abolished.

Fines to be reasonable, and according to the offence. Heretofore taken or demanded, under what name or description soever, for or upon granting any writs, inquests, commissions or process to suitors in their causes, shall be, and hereby are abolished.

Fines to be reasonable, and according to the offence.

her trespass or offence, and saving to him or her his or her contentment; That is to say, Every freeholder saving his freehold, a merchant saving his merchandize, and a mechanic saving the implements of his trade.

Excessive bail not to be required.

All elections to be free.

wise, presume to disturb or hinder any citizen of this state to make free election, upon pain of fine and imprisonment, and treble damages to the party grieved.

Right of petitioning.

state for the time being, or either house of the legislature; and all commitments and prosecutions for such petitioning, are illegal.

Freedom of speech in the legislature not to be questioned.

No tax to be levied, and no citizen to be compelled to arm himself or to go out of the state, or to find soldiers, without assent of the legislature.

any gift, loan, tax,

Fourth, That no person shall be put to answer without presentment before justices, or matter of record, or due process of law, according to the law of the land; and if any thing be done to the contrary, it shall be void in law, and holden for error.

Fifth, That no person, of what estate or condition soever, shall be taken, or imprisoned, or disinherited, or put to death, without being brought to answer by due process of law; and that no person shall be put out of his or her franchise or freehold, or lose his or her life or limb, or goods and chattels, unless he or she be duly brought to answer, and be fore-judged of the same, by due course of law; and if any thing be done contrary to the same, it shall be void in law, and holden for none.

Sixth, That neither justice nor right shall be sold to any person, nor denied, nor deferred; and that writs and process shall be granted freely and without delay, to all persons requiring the same; and nothing from henceforth shall be paid or taken for any writ or process, but the accustomed fees for writing, and for the seal of the same writ or process.

Seventh, That no citizens of this state shall be fined or amerced without reasonable cause, and such fine or amercement shall always be according to the quantity of his or

her trespass or offence, and saving to him or her his or her contentment; That is to say, Every freeholder saving his freehold, a merchant saving his merchandize, and a mechanic saving the implements of his trade.

Eighth, That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Ninth, That all elections shall be free; and that no person, by force of arms, nor by malice or menacing, or otherwise,

presume to disturb or hinder any citizen of this state to make free election, upon pain of fine and imprisonment, and treble damages to the party grieved.

Tenth, That it is the right of the citizens of this state to petition the person administering the government of this state for the time being, or either house of the legislature; and all commitments and prosecutions for such petitioning, are illegal.

Eleventh, That the freedom of speech and debates, and proceedings in the senate and assembly, shall not be impeached or questioned in any court or place out of the senate or assembly.

Twelfth, That no tax, duty, aid or imposition whatsoever, shall be taken or levied within this state, without the grant and assent of the people of this state, by their representatives in senate and assembly; and that no citizen of this state shall be, by any means, compelled to contribute to any gift, loan, tax, or other like charge, not set, laid or imposed by the legislature.

ature of this state : And further, That no citizen of this state shall be constrained to arm himself, or to go out of this state, or to find soldiers, or men of arms, either horsemen or footmen, if it be not by assent and grant of the people of this state, by their representatives in senate and assembly.

No soldiers to be billeted on citizens without their consent. Thirteenth, That by the laws and customs of this state, the citizens and inhabitants thereof cannot be compelled against their wills, to receive soldiers into their houses, and to sojourn them there ; and therefore, no officer, military or civil, nor any other person whatsoever, shall, from henceforth, presume to place, quarter, or billet any soldier or soldiers, upon any citizen or inhabitant of this state, of any degree or profession whatever, without his or her consent ; and that it shall and may be lawful for every such citizen and inhabitant, to refuse to sojourn or quarter any soldier or soldiers, notwithstanding any command, order, warrant, or billeting whatever.

CHAP. II.

An ACT for taking away and abolishing all Right and Claim of Purveyance within this State.

Passed 26th January, 1787.

BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That no sum or sums of money, or other thing, shall be taken, raised, taxed, rated, imposed, paid or levied, for or in regard of any provision, carriages or purveyance for the chief magistrate or officer, or any other officer or officers for the time being, of this state, or of the United States, or for any person or persons whomsoever ; and that no person or persons, by any warrant, commission or authority, under the great seal, or otherwise, by colour of buying or making provision or purveyance for the chief magistrate or officer, or any other officer, or officers for the time being, of this state, or of the United States, or for his, their or any of their household, or for any person or persons whomsoever, shall take any timber, fuel, cattle, corn, grain, malt, hay, straw, victuals, cart, carriage, or other thing whatsoever, of any of the citizens of this state, without the free and full consent of the owner or owners thereof, had and obtained without menace of inforcement ; nor shall summon, warn, take, use, or require any of the said citizens to furnish or find any horses, oxen or other cattle, carts, waggons, wains, or other carriages for the use of the chief magistrate or officer, or of any other officer or officers for the time being, of this state, or of the United States, or of any other person or persons whomsoever, for the carrying of his or their, or any of their goods, without such full and free consent as aforesaid. And further, That no pre-emption shall be allowed or claimed in the behalf of the chief magistrate, or officer, or of any other officer or officers for the time being, of this state or of the United States, or of any other person or persons whomsoever, in market or out of market ; but that it shall be forever hereafter free to all and every of the citizens of this state, to sell, dispose or employ his and her goods to any other person or persons, at his or her pleasure ; any pretence of making provision or purveyance of victuals, carriages, or other things for the chief magistrate or officer, or other officer or officers for the time being, of this state, or of the United States, or for any other person or persons whomsoever, or any pretence of pre-emption in his, their or any or

either of their behalfs notwithstanding ; and if any person or persons shall, at any time hereafter, make provision or purveyance for the chief magistrate or officer, or any other officer or officers for the time being, of this state, or of the United States, or for any other person or persons whomsoever, or impress, or take any such carriages, or other things aforesaid, on any pretence, or colour of any warrant aforesaid, under the great seal, or otherwise, contrary to the intent of this act, it shall be lawful for the justices of the peace, or any one or more of them dwelling near, and the constables of such town or place where such occasion shall happen, at the request of the party grieved, and they are hereby enjoined, to commit, or cause to be committed the party or parties so doing and offending, to gaol, till the next general sessions, there to be indicted and proceeded against for the same ; and that the officers and inhabitants of the said town or place where such offence shall happen, shall be assistant therein : And moreover, the party grieved shall have his or her action or actions against such offender or offenders, and therein recover his or her treble damages and treble costs ; in which action no aid-prayer, privilege, protection, imparlance, injunction, or order of restraint, shall be granted or allowed : And if any person or persons shall (after notice given that the action depending is grounded upon this statute) cause or procure any action at the common law, grounded on this statute, to be delayed or stayed before judgment, by colour or means of any order, injunction, power, warrant, or authority, save only of the court where such action shall be brought and depending ; or after judgment had upon such action, shall cause or procure execution of such judgment to be stayed or delayed, by colour or means of any order, injunction, warrant, power, or authority,

† Attaints abolished save only by writ of error or † attain, or order of such 11th sess. ch. 46. sec. 36. court where such writ of error or attain shall be depending ; that then the person so offending shall forfeit to the people of this state, all his or her goods and chattels, and the issues and profits of his or her lands and tenements during life.

C H A P. III.

An ACT for the Recovery of Damages in Writs of Assise and real Actions.

Passed 26th January, 1787.

BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That in all assises, if judgment be given for the plaintiff, he or she shall recover his or her damages ; and in all assises of novel disseisin and writs of entry, the demandants, if they recover the tenements demanded, shall also recover their damages against the disseisors : And if the disseisors alien the land, and have not whereof the damages may be levied, they to whose hands such tenements shall come, shall be charged with the damages, so that every one shall answer for his or her time : And further, That in all writs and actions possessory, whereby lands or tenements are demanded, damages shall be recovered as aforesaid.

C H A P. IV.

An ACT concerning Dower.

Passed 26th January, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That a widow, after the death of her husband, shall give nothing for her

dower, or her inheritance which her husband and she held at the day of the death of her husband; and she shall tarry in the chief house of her husband forty days after the death of her husband, or until her dower be assigned to her; and she shall have in the mean time her reasonable sustenance out of the estate of her husband; and for her dower shall be assigned unto her the third part of all the lands of her husband, which were his at any time during the coverture.

Widows deforced of their dower to recover damages. II. *And be it further enacted by the authority aforesaid,* That in case widows, after the death of their husbands, be deforced of their dowers, and cannot have their dowers or quarantine without suit, whosoever deforce them of their dowers or quarantine of the lands whereof their husbands died or shall die seized, and be convicted of such wrongful deforcement, shall yield damages to the same widows; that is to say, The value of the whole dower to them belonging, from the time of the death of their husbands unto the day that the said widows shall recover seisin of their dowers by judgment of the court, and the deforceors shall nevertheless be amerced.

A writ of dower unde nihil habet not to abate for receiving dower of any other than the tenant. III. *And be it further enacted by the authority aforesaid,* That in a writ of dower unde nihil habet, the writ shall not abate by the exception of the tenant, because she hath received her dower of another person before her writ purchased, unless he can shew that she hath received part of her dower of himself, and in the same town, before the writ purchased.

IV. *And be it further enacted by the authority aforesaid,* That in case where the husband, being impleaded for land, giveth up the land demanded unto his adversary, by covin, after the death of the husband, his wife shall recover her dower of the same land, if she demand it by writ; and in case where the husband loseth the land in demand by default, and his wife after his death demandeth her dower, she shall be heard; and if it be alledged against her, that her husband lost the land whereof dower is demanded, by judgment, whereby she ought not to have dower, and then it be enquired by what judgment, and it be found that it was by default, whereunto the tenant must answer, then it behoveth the tenant to answer further, and shew that he had and hath right in the same land, according to the form of the writ that the tenant before purchased against the husband; and if he can shew that the husband of such wife had no right in the lands, nor any other but he that holderth them, the tenant shall go quit, and the wife shall not recover her dower therein; which thing, if he cannot shew, the wife shall recover her dower.

V. *And be it further enacted by the authority aforesaid,* That where a woman, not having a right to demand dower, and the heir being within age, shall purchase a writ of dower against a guardian, and the guardian shall endow the woman by favour, or make default, or by collusion defend the plea faintly, whereby the woman is awarded her dower in prejudice of the heir; in all such cases, the heir when he comes to full age, shall have an action to demand the seisin of his ancestor against such a woman, like as he should have against any other deforceor. But the woman shall have her exception saved against the demandant, to shew that she had right to her dower, which if she can shew, she shall go quit and retain her dower, and the heir shall be amerced; and if she cannot shew that she had right to her dower, the heir shall recover his demand; and in like manner a woman shall be aided, if the heir, or any other do implead her for her dower, or if she lose her dower by default, in which case the default shall not be so prejudi-

cial to her but that she shall recover her dower if she have right thereto; and she shall have a writ in this form: Command A, that justly and without delay, he render to B, who was the wife of F, so much land, with the appurtenances, in C, which she claims to be her reasonable dower, or, of her reasonable dower, and of which the aforesaid A deforceth her. And to this writ the tenant shall have his exception, to shew that she had no right to be endowed, which if he can verify, he shall go quit; if not, the woman shall recover the land whereof she was before endowed.

VI. *And be it further enacted by the authority aforesaid,* That a writ of admeasurement of dower shall be from henceforth granted to a guardian and the heir when he cometh to full age, shall not be barred by the suit of such guardian that sueth against the tenant in dower feignedly and by collusion, but that he may admeasure the dower after as it ought to be admeasured by law; and in the writ of admeasurement of dower,

Manner of proceeding in writs of admeasurement of dower or pasture.

as well as in the writ of admeasurement of pasture, when it is come to the great distress, day shall be given within which two counties may be holden, at which open proclamation shall be made, that the defendant shall come at the day contained in the writ to answer to the plaintiff; at which day, if he come, the plea shall pass between them; and if he do not come, and the proclamation be testified and returned by the sheriff in manner aforesaid, upon his default, admeasurement shall be made: And further, That hereafter no sheriff shall hold pleas of admeasurement of dower or of pasture, but all such writs shall be made returnable before the justices of the supreme court, or in the courts of common pleas in the respective counties.

A woman who leaves her husband and lives with her adulterer, barred of her dower, unless her husband be reconciled to her.

VII. *And be it further enacted by the authority aforesaid,* That if a wife willingly leave her husband, and go away and continue with her adulterer, and be thereof convicted, she shall be barred forever of action to demand her dower that she might have had of her husband's lands, unless her husband willingly be reconciled to her and permit her to dwell with him; in which case she shall be restored to her action of dower.

VIII. *And be it further enacted by the authority aforesaid,* That where any man hath purchased, or hath an estate made and conveyed of and in any lands, tenements or hereditaments, unto him and to his wife, and to the heirs of the husband or wife, or to the husband and to his wife, and to the heirs of their two bodies begotten, or to the heirs of one of their bodies begotten, or to the husband and to his wife for the term of their lives, or for the term of the life of the said wife; or where any such estate or purchase of any lands, tenements or hereditaments hath been, or hereafter shall be made to any husband and to his wife, in manner and form above expressed, or to any other person or persons, and to their heirs and assigns, to the use and behoof of the said husband and wife, or to the use of the wife, as is before rehearsed, for the jointure of the wife; that then, and in every such case, every married woman having such jointure made or hereafter to be made, shall not claim or have title to have any dower of the residue of the lands, tenements or hereditaments that at any time were her said husband's by whom she hath any such jointure, nor shall demand nor claim her dower of or against them that have the lands and inheritances of her said husband; but if any such woman be lawfully expelled or evicted from her jointure, or from any part thereof, without any fraud or covin by lawful entry or action, or by discontinuance of her husband, then every such woman

shall be endowed of as much of the residue of her husband's lands, tenements or hereditaments, whereof she was before dowable, as the same lands and tenements from which she shall be so evicted and expelled, shall amount or extend unto.

IX. *And be it further enacted by the authority aforesaid,* That if any wife have, or hereafter shall have, any lands, tenements or hereditaments given or assured unto her after marriage, for the term of her life, or otherwise, in jointure, and the said wife after that shall survive her same husband in whose time the said jointure was made or assured unto her, that then the same wife so surviving shall or may, at her liberty, after the death of her said husband, refuse to have and take the lands, tenements and hereditaments so to her given, appointed or assured during the coverture, for term of her life, or otherwise, in jointure; and thereupon shall or may have, ask, demand and take her dower, by writ of dower or otherwise, according to the common law, of and in all such lands, tenements and hereditaments as her husband was and stood seised of any estate of inheritance, at any time during the coverture.

No woman to be deprived of dower by attainder of her husband.

X. *And be it further enacted by the authority aforesaid,* That the wife of every person who shall hereafter be attainted, convicted or outlawed of any treason, petty treason, misprision of treason, murder or felony whatsoever, shall be endowable and enabled, if she survive her husband, to demand, have and enjoy her dower, in like manner and form as if her husband had not been attainted, convicted or outlawed.

XI. *And be it further enacted by the authority aforesaid,* That wheresoever and whensoever any woman shall be ravished, and after such rape do consent to the ravisher, as well the ravisher as she that is ravished, and every of them shall, from thenceforth, be disabled, and by the same deed be unable to have or challenge any inheritance, dower, jointure, joint-feeoffment, or joint-purchase, after the death of their husbands and ancestors; and that in this case the next of blood of the ravisher, or of her who is ravished, to whom such inheritance, dower, jointure, joint-feeoffment, or joint-purchase, ought to revert, remain or fall after the death of the ravisher, or of her that is ravished, shall have title immediately; that is to say, After the rape to enter upon the ravisher, or her that is ravished, and their assigns and tenants, in the same inheritance, dower, jointure, joint-feeoffment, or joint-purchase, and to hold the same in state of inheritance.

C H A P. V.

An ACT for preventing Delays by Effoins and Protections, and for abolishing Trials of Issues, by Wager of Law.

Passed 30th January, 1787.

BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That no effoin or protection shall hereafter be allowed in any suit whatsoever.

II. *And be it further enacted by the authority aforesaid,* That trials by wager of law shall be, and hereby are abolished in all cases, except in the case of non-summons; and that no person shall hereafter be permitted to wage his or her law in any case, except that of non-summons in real actions.

C H A P. VI.

An ACT for preventing Waste.

Passed 30th January, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That no guardian shall make or suffer any waste, sale or destruction of the inheritance of his ward, or of those things that he hath, or may have in his custody, but shall safely keep the same inheritance to the use of the said heir, and keep up and sustain the houses, gardens and other things pertaining to the same lands, by and with the issues and profits thereof, and shall deliver the same to his ward, when he cometh to his full age, in as good order and condition at least as such guardian received the same; and shall answer to such heir for the residue of the issues and profits of the same inheritance, by a lawful account, saving to the same guardians their reasonable charges and expences. And if any guardian shall make or suffer any waste, sale or destruction of the inheritance of his ward, he shall lose the same custody, and shall recompence the ward thrice so much as the damages shall be taxed at by the jury.

II. *And be it further enacted by the authority aforesaid,* That no tenant for life or years, or for any other term, shall, during the term, make or suffer any waste, sale or destruction of houses, gardens, orchards, lands or woods, or any thing belonging to the tenements demised, without special licence in writing, making mention that he may do it.

III. *And be it further enacted by the authority aforesaid,* That from henceforth any person may have a writ of waste out of the chancery, against him or her who holdeth by courtesy, or otherwise, for term of life or for term of years, or other term, or a woman in dower as well as against guardians. And whoever shall be convicted of waste, shall lose the thing or place wasted, and shall recompence thrice so much as the damages shall be taxed at by the jury.

IV. *And be it further enacted by the authority aforesaid,* That in all actions of waste, if the defendant come not at the return of the original writ, he shall be attached; and if he come not at the return of the attachment, he shall be distrained; and if he come not after the distress, or if he come and afterwards make default, the sheriff shall be commanded, that in his proper person he take with him twelve good and lawful men of his county, and go to the place wasted, and enquire of the waste done, and return an inquest; and after the inquest returned, the plaintiff shall have judgment to recover the place wasted, and treble the damages found by the inquest.

V. *And be it further enacted by the authority aforesaid,* That where two or more do, or shall hold any lands, tenements, woods, fishing, or other such thing in common as parceners, tenants in common, or joint-tenants, wherein none knoweth his or her several part, and some or one of them do waste against the mind of the other, an action shall lie by a writ of waste; and when it shall come unto judgment, the defendant shall chuse either to take his or her part in a place certain by the sheriff with a jury to be assigned, or else he or she shall grant to take nothing from thenceforth, in the same lands, tenements, woods, fishings, or other such thing, but as his or her partners will take; and if he or she chuse to take his or her part in a place certain, the same shall be assigned him or her in the part wasted, as it was before he or she committed the waste. But if the defendant shall not chuse to take his

or her part in a place certain, or if the waste exceed his or her proportion, the plaintiff shall recover against such defendant, such damages as shall be found by the jury or inquest.

VI. *And be it further enacted by the authority aforesaid,* That every heir in whose ward soever he or she be, and whether he or she be in ward or not, and as well within age as of full age, shall have his or her recovery by a writ of waste, for waste and destruction made in lands and tenements, of his or her inheritance, as well in the time of his or her ancestor or ancestors, as at any other time after the inheritance descended or come to him or her, and shall be answered unto therefore, and he or she shall recover the tenements wasted, and treble damages as aforesaid.

VII. *And be it further enacted by the authority aforesaid,* That where any tenant for term of life, or for another's life, or for term of years, or any other term, hath or shall let or grant his or her estate in the lands and tenements demised to or held by him or her, to any person or persons, and shall still continue to occupy the same lands and tenements, or take the profits thereof, and shall commit or suffer waste and destruction in the same lands and tenements, to the disinheritation of him, her or them in the reversion, he, she or they to whom the reversion doth or shall appertain, may, in such case, have and maintain a writ of waste against the said tenant for term of life, or of another's life, or for term of years, or other term, and recover against him or her the place wasted, and his, her or their treble damages for the waste done, if the said tenant was punishable, of or for waste before he or she leased or granted over his or her estate as aforesaid but not otherwise.

C H A P. VII.

An ACT to alter the Place of holding Elections in Caughnawaga District, in the County of Montgomery.

Passed 30th January, 1787.

WHEREAS the place assigned by law for holding the annual town-meetings and elections in Caughnawaga district, is inconvenient for the people of the said district; for remedy whereof,

Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That the annual town-meetings and elections in the said district, shall, in future, be held at the court-house in John's-Town, in the district aforesaid, instead of the place heretofore assigned by law for that purpose.

C H A P. VIII.

An ACT concerning Justices of the Peace.

Passed 30th January, 1787.

BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That in every county of this state, good and lawful men of the best reputation, and who be no maintainers of evil or barretors, shall be assigned by commission under the great seal, from time to time, according to the constitution of this state, justices to keep the peace in the same counties respectively, who shall jointly and severally have power to keep and cause to be

kept, all laws and ordinances made or to be made for the good of the peace, and for the conservation of the same, and for the quiet rule and government of the citizens and inhabitants of this state, in all and every the articles thereof, in the same counties respectively, as well within liberties, as without, according to the force, form and effect of the same laws and ordinances; and to chastise and punish all persons offending against the form of those laws and ordinances, or any of them, in the said respective counties, in such manner as, according to the form of those laws and ordinances, shall be fit to be done; and to cause to come before them, or any or either of them, all those persons who shall break the peace, or have used, or shall use threats to any one or more of the citizens or inhabitants of this state, concerning their bodies, or the firing of their houses or barns, to find sufficient security for the peace, or their good behaviour towards the people and inhabitants of this state; and if they shall refuse to find such security, then them in prison, until they shall find such security, to cause to be safely kept: And to cause to come before them, or any or either of them, all those who be not of good fame, where they shall be found, to find sufficient security for their good behaviour towards the people and inhabitants of this state; and if they refuse to find such security, then them in prison, until they shall find such security, to cause to be safely kept. And further, That the same justices, or

To hold sessions of any three or more of them, shall have power in the same the peace.

Additional powers.
23th sess. ch. 24.

respective counties, to enquire, by the oath of good and lawful men of the same counties respectively, by whom the truth may be the better known, of all and all manner of larcenies, thefts, trespasses, forestallings, regratings, engrossings, and extortions whatsoever, and of all and singular other crimes and offences, of which justices of the peace may or ought lawfully to enquire, by whomsoever, and after what manner soever, in the said respective counties done or perpetrated, or which shall happen to be there done or attempted. And also, Of all those who in the said respective counties have gone or rode, or hereafter shall presume to go or ride in companies with armed force, against the peace, to the disturbance of the citizens and inhabitants of this state. And also, Of all those who have there lain in wait, or hereafter shall presume to lie in wait to maim, or cut or kill any citizen or inhabitant of this state. And also, Of all victuallers and innholders, and all and singular other persons who have offended, or attempted to offend, or hereafter shall presume or attempt to offend, in the same respective counties, in the abuse of weights or measures, or in the sale of victuals, against the form of the laws and ordinances of this state, or any of them, made for the common good of this state, and the citizens and inhabitants thereof. And also, Of all sheriffs, bailiffs, constables, gaolers, and other officers whatsoever, who in the execution of their offices about the premises, or any of them, have unduly demeaned themselves, or hereafter shall presume to behave themselves unduly, or have been, or hereafter shall happen to be careless, remiss or negligent in the same respective counties, and of all and singular articles and circumstances, and all other things whatsoever that concern the premises, or any of them, by whomsoever, and after what manner soever, in the said respective counties done or perpetrated, or which shall hereafter there happen to be done or attempted, in what manner soever; and to inspect all indictments whatsoever so before them or any of them taken or to be taken, or before others late justices of the peace in the same respective counties made or taken, and not determined; and to make and continue processes thereupon, against all and singular the persons so indicted, or who

before them shall happen to be indicted, until they be taken, surrender themselves, or be outlawed; and to hear and determine all and singular the larcenies, thefts, trespasses, forestallings, regratings, engrossings, extortions, unlawful assemblies, indictments aforesaid, and all and singular other the premises, according to the laws, ordinances and statutes of this state, as in the like case it has been accustomed or ought to be done: and the same offenders, and every of them, for their offences, by fines, ransoms, amerciaments, forfeitures, and other means, according to the law and custom of this state, and the form of the ordinances and statutes aforesaid, it has been accustomed or ought to be done to chastise and punish.

II. *And be it further enacted by the authority aforesaid,* That the respective sheriffs of each and every of the respective counties of this state, at certain days and places, which the justices of the peace of the same counties respectively, or any three or more of them, shall make known to them, shall cause to come before the same justices of the peace of the same counties respectively, so many such good and lawful men of their bailiwick or counties respectively, as well within liberties as without, by whom the truth of the matter in the premises shall be the better known and enquired into.

III. *And be it further enacted by the authority aforesaid,* That the said justices of the peace, or any three or more of them, shall hold and keep their general sessions in their respective counties, at such times and places as they are or shall be authorized and required to do, by the laws and ordinances of this state, and oftner, if need be. And further, That no suit, indictment, plea, process or proceeding, before justices of the peace, in any county, shall be discontinued by any new commission of the peace to be made, but the same suits, indictments, pleas, process and proceedings, shall stand in their full force; and the justices in such new commissions so assigned, after that they shall have the records of the same pleas and process before them, shall have power and authority to continue the same pleas and process, and the same pleas and process, and all that shall depend upon them, to hear and finally determine, as the other justices might and ought to have done of and in the same, if no new commission had been made.

IV. *And be it further enacted by the authority aforesaid,* That all fines to be set and imposed by justices of the peace, or any or either of them, for a trespass, or any other offence done or committed, or to be done or committed by any person, shall be reasonable and just, having regard to the trespass or offence, and the causes for which they be set and imposed.

V. *And be it further enacted by the authority aforesaid,* That every justice of the peace who hath taken, or shall take any recognizance for the keeping of the peace, or good behaviour, shall certify, send or bring the same recognizance to the next general sessions of the peace where he is or hath been justice, that the party so bound may be called; and if the party so bound make default, the same default shall be then there recorded, and the same recognizance, with the record of the default, shall be sent and certified into the exchequer.

VI. *And be it further enacted by the authority aforesaid,* That all and every justice and justices of the peace, and every mayor, recorder and alderman, having the authority of, and acting as a justice of the peace, before whom any person shall be brought for any treason, misprision of treason, murder, manslaughter or felony, or for suspicion thereof, before he or they shall commit or send such prisoner to ward, shall take the examination of such prisoner, and information of those that bring him or her, of the fact and cir-

circumstances thereof; and the same, or as much thereof as shall be material to prove the offence, shall be put in writing, within two days after the said examination, and shall certify the same in writing, subscribed or signed by him or them, with his or their own hands, at the next court in which such prisoner is or ought to be tried for the same offence. And further, The said justices, mayors, recorders and aldermen, and every of them, are hereby authorised and required to bind all such by recognizance, as do declare any thing material to prove the said treason, misprision of treason, murder, manslaughter or felony, against such prisoner, to appear in the supreme court, the term following, or at the next sessions of oyer and terminer or general gaol delivery, of or for the county, city or place where the offence was committed, or in such other court where the said offence is properly cognizable, then and there to give evidence against the party; and shall certify the said recognizance and recognizances taken before them, together with the said examinations, into the said court where such witnesses are bound to appear, on the first day of the term or sessions of the same court: And in case any justice of the peace, mayor, recorder or alderman shall refuse or neglect to take such examination, as aforesaid, or to certify the same as aforesaid, or shall refuse or neglect to bind the witnesses to appear as aforesaid, or to certify the recognizances by him taken as aforesaid; the judges and justices of the court wherein such witnesses ought to be bound to appear, and to which such examinations and recognizances ought to be certified, upon due proof thereof by examination before them, shall, for every such offence or neglect, set such a fine upon every of the said justices, mayors, recorders and aldermen, as the same judges and justices of such court shall think meet, and estreat the same as other fines and amerciaments assessed before such judges and justices ought to be estreated.

VII. And whereas in many cases, where the justices of the peace are by law empowered to give or make judgments or orders, great expences have been occasioned, by reason that such judgments or orders have, on appeals to the justices of the peace, at their respective general sessions, been quashed, or set aside, upon exceptions or objections to the form or forms of the proceedings, without hearing or examining the truth and merits of the matters in question; For remedy whereof, *Be it further enacted by the authority aforesaid*, That upon all appeals to be made to the justices of the peace, at their respective general sessions, to be holden for any county, city or place in this state, against judgments or orders given or made by any justices of the peace as aforesaid, such justices so assembled at any such sessions, shall, and they are hereby required, from time to time, within their respective jurisdictions, upon all and every such appeals so made to them, to cause any defect or defects of form that shall be found in any such original judgments or orders to be rectified and amended, without any cost or charge to the parties concerned; and after such amendment made, shall proceed to hear, examine and consider the truth and merits of all matters concerning such original judgments or orders, and likewise to examine all witnesses upon oath, and hear all other proofs relating thereto, and to make such determinations thereupon, as by law they should or ought to have done, in case there had not been such defect or want of form in the original proceeding.

VIII. *And be it further enacted by the authority aforesaid*, That in case any person, against whom a warrant shall be issued by any justices or justice of the peace, of any county, city or place in this state, for any offence there committed or done, shall escape, go into, reside, or be in any other

Manner of proceeding when any person against whom a warrant is issued, goes or lives out of the county.

county, city or place, out of the jurisdiction of the justices or justice granting such warrant as aforesaid, it shall and may be lawful for any justice or justices of the peace, of the county, city or place where such person shall escape, go into, reside, or be ; and such justice or justices is and are hereby required, upon proof being made, upon oath, of the hand writing of the justice or justices granting such warrant, to endorse his or their name or names on such warrant, which shall be a sufficient authority to the person or persons bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute such warrant in such other county, city or place, out of the jurisdiction of the justice or justices granting such warrant as aforesaid, and to apprehend and to carry such offender or offenders before the justice who endorsed such warrant, or some other justice or justices of such other county, city or place where such warrant was endorsed ; and in case the offence for which such offender shall be so apprehended as aforesaid, shall be bailable in law, and such offender shall be willing and ready to give bail for his or her appearance, at the next general gaol delivery, or next general sessions of the peace, to be held in and for the county, city or place where the offence was committed, such justice or justices of such other county, city or place, before whom such offender or offenders shall be brought, shall and may take bail of such offender or offenders, for his, her or their appearance at the next general gaol delivery, or at the next general sessions of the peace, to be held in and for the county, city or place where such offence was committed, in the same manner as the justices of the peace of the proper county, city or place ; and the justice or justices of such other county, city or place, so taking bail as aforesaid, shall deliver the recognizance, together with the examination or confession of such offender or offenders, and all other proceedings relating thereto, to the constable, or other person or persons so apprehending such offender or offenders, as aforesaid, who are hereby required to receive the same, and to deliver over such recognizance, examination or other proceedings, to the clerk of the court of general gaol delivery, or clerk of the peace of the county, city or place where such offender or offenders is or are required to appear, by virtue of such recognizance ; and such recognizance, examination or confession, shall be as good and effectual in law, to all intents and purposes, and of the same force and validity, as if the same had been entered into, taken or acknowledged before a justice or justices of the peace in and for the proper county, city or place where the offence was committed, and the same proceedings shall be had thereon ; and in case such constable, or other person to whom such recognizance, examination or confession or other proceedings, shall be so delivered as aforesaid, shall refuse or neglect to deliver over the same to the clerk of the court of general gaol delivery, or clerk of the peace of the county, city or place, where such offender is required to appear by virtue of such recognizance, such constable, or other person, shall forfeit the sum of ten pounds, to be recovered against him by action of debt, bill, plaint or information, in any court of record, by any person or persons who will prosecute or sue for the same : And in case the offence for which such offender or offenders shall be apprehended and taken in any other county, city or place, shall not be bailable in law, or such offender or offenders shall not give bail for his or her appearance at the next general gaol delivery, or next general sessions of the peace to be held in and for the county, city or place where the offence was committed, to the satisfaction of the justice before whom such offender or offenders shall be brought, in such other county, city or place, then, and in

that case, the constable, or other person or persons so apprehending such offender or offenders, shall carry and convey such offender or offenders, before one of the justices of the peace of the proper county, city or place where such offence was committed, there to be dealt with according to law. And

No action to be brought against a justice who shall endorse such warrant.

further, That no action of trespass, false imprisonment, information or indictment, or other action, shall be brought, sued, commenced or prosecuted by any person or persons whatsoever, against the justice or justices who shall endorse such warrant, for or by reason of his or their endorsing such warrant; but such person or persons shall be at liberty to bring or prosecute his, her or their action or suit, against the justice or justices who originally granted such warrant, in the same manner as such person or persons might have done in case this clause of this act had not been made.

Indictments to be sent to the justices of gaol delivery.

IX. *And be it further enacted by the authority aforesaid,* That the justices of the peace shall send their indictments before the justices assigned or empowered to deliver the gaols in their respective cities and counties.

Mayors, recorders and aldermen of New-York and Albany, to have the powers of justices of the peace.

X. *And be it further enacted by the authority aforesaid,* That the mayors, recorders and aldermen of the cities of New-York and Albany, and each of them shall, respectively, have the like powers in the said respective cities as the justices of the peace have in their respective counties by virtue of this act.

C H A P. IX.

An ACT declaring what Process may be issued in certain personal Actions and for regulating Outlawries.

Passed 3d February, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That in all actions of account, debt, detinue, annuity, covenant, conspiracy, and of the case, and in actions of replevin after a capias in withernam is returned, that the person against whom it is issued has no goods, the like process may hereafter be had and used as in actions of trespass done with force and arms; and in these, as well as in all other cases where process issues for taking the body, if it be returned, that the person against whom such process issued is not found, such process may be pursued to the exigent and outlawry thereupon.

II. *And be it further enacted by the authority aforesaid,* That each and every sheriff shall respectively in his county hold a court, either in person or by his sufficient deputy, on every first and third Monday in every month, at the court-house in his county, to be called his County Court, for the purpose of demanding persons upon exigents, and pronouncing outlawries thereupon; and that it shall not be necessary for the coroners of the county, or any of them, to attend at such court, or to give judgment of outlawry; but it shall be sufficient for the sheriff or his deputy, to give the judgment of outlawry, and to return the same upon the exigent, without saying by the judgment of the coroners.

III. *And be it further enacted by the authority aforesaid,* That in every original writ of actions personal, and in all appeals, indictments and inform-

tions, and in which the exigent shall be awarded, to the names of the defendants, in such writs original, appeals, indictments and informations, additions shall be made of their estate or degree, or mystery, and of the towns or places and counties of which they were or be, or in which they be or were conversant ; and if by process upon the said original writ, appeal, indictments or informations, in which the said additions be omitted, any outlawries be pronounced, they shall be void, frustrate, and holden for none ; and that before any outlawries pronounced, the said writs, appeals, indictments and informations, shall be abated by the exception of the party where in the same the said additions be omitted : Provided always, That although the said writs of actions personal be not according to the records and deeds, by the surplusage of the additions aforesaid, they shall not be abated for that cause.

IV. *And be it further enacted by the authority aforesaid,* That no person charged as accessory in any indictment or appeal, shall be outlawed, until the principal be attainted ; but such indictments and appeals may be nevertheless prosecuted ; but the exigent against the accessory shall remain until the principal be attainted by outlawry or otherwise.

V. *And be it further enacted by the authority aforesaid,* That after any person is or shall be indicted or appealed of treason or felony, it shall be commanded to the sheriff to take the body of the person so indicted or appealed, by a writ or precept called a *capias* ; and if the sheriff return on the same writ or precept, that the body is not found, another writ or precept of *capias* shall be immediately made, returnable at a certain day, not less than three months after the date of the same writ ; and in the same writ shall be comprised, that the sheriff shall cause the goods and chattels of the person indicted or appealed, to be seized and safely kept, until the day of the return of the writ or precept ; and if the sheriff return that the body is not found, and the person indicted or appealed cometh not, the exigent shall be awarded, and the goods and chattels so seized, shall be forfeited to the people of this state. But if the person indicted or appealed come and yield himself, or be taken by the sheriff or other officer, before the return of the second *capias*, then the goods and chattels shall be saved.

VI. *And be it further enacted by the authority aforesaid,* That upon every indictment and appeal against any citizen of this state, dwelling in other counties than where such indictment or appeal is or shall be taken, of any treason or felony after the first writ of *capias* returned, another writ of *capias* shall be awarded, directed to the sheriff of the county where the person indicted or appealed is, or shall be supposed to be conversant, by the same indictment or appeal, returnable in the same court, or before the same justices before whom the indictment or appeal is or shall be taken, at a certain day not less than three months after the date of the same writ, by which writ the sheriff shall be commanded to take the body of the person so indicted or appealed, if he or she shall be found in his bailiwick ; and if he or she shall not be found in his bailiwick, that the said sheriff shall make proclamation in two of his county courts, before the return of the same writ, that the person so indicted or appealed shall appear at the said court, or before the said justices where he or she is, or shall be indicted or appealed, at the day of the return of the same writ, to answer to the people of the state of New-York, or the party, of the treason, felony or trespass, whereof he or she is, or shall be so indicted or appealed ; and after such writ of *capias* so served and returned, if he or she so indicted or appealed, come not at the day of the return of the same writ of *capias*, the exigent shall be awarded against such person so indicted or

appealed. And where any such indictment or appeal is or shall be taken before justices assigned to hear and determine, or before justices of the peace, or before any other having power to take such indictments or appeals, and shall be removed or delivered into the supreme court, by certiorari or otherwise, no exigent shall be awarded by the same supreme court, until such writ of *capias* with proclamation shall be awarded, and served and returned as aforesaid. And if any exigent shall be awarded upon any such indictment or appeal before such *capias* with proclamation be awarded, served and returned as aforesaid, and outlawry be upon that pronounced, as well the exigent so awarded and the outlawry thereupon, and every of them, shall be holden for none and void; and the party against whom such exigent shall be awarded, or outlawry pronounced, contrary to the form aforesaid, shall not be endamaged thereby, nor put to loss of his or her life, or goods or chattels, lands or tenements.

VII. *And be it further enacted by the authority aforesaid,* That in every action personal, and in all cases of indictments and informations for trespasses or misdemeanors, wherein or whereupon any writ of exigent shall be awarded out of any court, one writ of proclamation shall be awarded and made out of the same court, having day of test and return, as the said writ of exigent shall have, directed and delivered of record to the sheriff of the county where the defendant, at the time of the exigent so awarded, shall be dwelling; which writ of proclamation shall contain the effect of the same action, indictment, or information. And the sheriff of the county unto whom any such writ of proclamation shall be directed, shall make, or cause to be made, three proclamations, in the form following; That is to say, One of the same proclamations in his open county court, and one other of the same proclamations at the general sessions of the peace in those parts where the party defendant, at the time of the exigent awarded, shall be dwelling, and one other of the same proclamations, one month at least before the fifth demand, by virtue of the said writ of exigent, at or near to the most usual door of the church of the town or place where the defendant shall be dwelling at the time of awarding the said exigent; and if there be more than one church in such town, then at or near the most usual door of the church nearest the defendant's dwelling; and if there be no church in such town, then at or near the most usual door of the church in the next town nearest the defendant's dwelling; and upon a Sunday, immediately after divine service and sermon, if any there be; and if any such defendant shall, at the time of awarding the exigent, reside out of this state, then such writ of proclamation shall be directed to and executed by the sheriff to whom the exigent shall be directed; and in such case such writ of proclamation shall be published in one or more of the news-papers to be printed in the city of New-York, for twelve several weeks before the return of the exigent. And that all outlawries had and pronounced, and no writs of proclamations awarded and returned, according to the form of this statute, shall be utterly void and of none effect, and may be avoided by averment, without suing out any writ of error.

VIII. *And be it further enacted by the authority aforesaid,* That before any reversal of any outlawry be had, by plea or otherwise, and before any allowance of any writ in error upon any outlawry, the defendant and defendants in the original action or suit, shall put in bail, if bail was required in such original action or suit, not only to appear and answer to the plaintiff in the former suit, in a new action to be commenced by the said plaintiff, for the cause mentioned in the first action, but also to satisfy the condemnation, if the

plaintiff shall begin such suit before the end of two terms next after the allowing of the writ of error, or otherwise avoiding of the said outlawry.

IX. *And be it further enacted by the authority aforesaid,* That no person or persons whomsoever, who are or shall be outlawed, in any court, for any cause, matter or thing whatsoever, other than for treason or felony, shall be compelled to come in person into court, or appear in person in court, to reverse such outlawry; but shall or may appear by attorney, and reverse such outlawry, without bail, in all cases, except where special bail shall be ordered by the court.

X. *And be it further enacted by the authority aforesaid,* That in all cases where an outlawry shall be had before judgment in any personal action, the plaintiff at whose suit the same outlawry shall be had, may suggest and set forth his cause of action upon the roll of the exigent, after the return of the same, upon which a writ shall be issued to the sheriff of the county where the action shall be brought, to summon a jury to appear in the same court where the action shall be brought, if the same shall be brought in any other court than the supreme court; and if the same action shall be brought in the supreme court, then before the justices or justice of the supreme court, at the next circuit court to be held in the county where such action shall be brought, to enquire into the truth of the matters charged by the plaintiff, and to assess the damages that the plaintiff shall have sustained thereby. And if the action shall be in the supreme court, it shall be commanded, in the same writ, to the justices or justice who shall hold such circuit court, that he or they shall make a return thereof to the supreme court, at the time in such writ mentioned; and upon the return of such writ, if the action shall be in the supreme court, or upon the execution of such writ, if the action shall be in any other court, execution shall be awarded for the sum found by the jury, with costs, both upon the outlawry and prosecution of the said enquiry. And further, That upon the execution of every such writ of enquiry, the plaintiff shall prove his cause of action and debt or damages, in the same manner as if the defendant had appeared and traversed the same.

XI. *And be it further enacted by the authority aforesaid,* That upon the payment of the sum so found upon such enquiry as aforesaid, with costs as aforesaid; or where any outlawry shall be had after judgment in any personal action, upon payment of the debt or damages and costs adjudged, or upon the same being levied by any execution, or brought into court by the defendant, such outlawry and judgment shall be considered as satisfied, and shall cease to have any further or other operation; and an entry shall, in such case, be made on the roll of the exigent, after the return of the same; and after the execution or return of the enquiry, where such enquiry as aforesaid shall be made, that the debt or damages and costs are paid or levied, or brought into court; and that the defendant, as to the outlawry, or judgment and outlawry, and all execution thereupon, go without day. And further, That no outlawry in any personal action, shall work any disability or forfeiture whatsoever, in favour of any other person than the plaintiff at whose suit it shall be had.

Debt or damages being paid or levied, the operation of the outlawry to cease.

C H A P. X.

An ACT concerning the Courts of Common Pleas and General Sessions of the Peace.

Passed 5th February, 1787.

I. *BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That* Times of holding the court of general sessions of the peace, in and for the courts of sessions. city and county of New-York, shall be held on the first Tuesdays in February, May, August and November, in every year; each of which sessions of the peace may last, continue, and be held until the several Tuesdays next following, inclusive.

That the courts of common pleas and general sessions of the peace, in and for the county of Albany, shall be held at the city-hall of the city of Albany, on the third Tuesday in January, and the first Tuesdays in June and October, in every year; each of which courts may last, continue, and be held until the several Tuesdays next following, inclusive.

That the courts of common pleas and general sessions of the peace, in and for the county of Suffolk, shall be held at the court-house in the same county, on the last Tuesday in March and the first Tuesday in October, in every year, and may continue and be held until the several Saturdays next following, inclusive.

That the courts of common pleas and general sessions of the peace, in and for the county of Queen's, shall be held February term abo. listed, 13th sess. ch. 27. at the court-house in the same county, on the first Mondays in February and June, and the second Monday in November, in every year, and may continue and be held until the several Saturdays next following, inclusive.

That the courts of common pleas and general sessions of the peace, in and for the county of King's, shall be held at the court-house in the same county, on the third Tuesdays in April and October, in every year, and may continue and be held until the several Saturdays next following, inclusive.

That the courts of common pleas and general sessions of the peace, in for the county of Richmond, shall be held January term abo. listed 14th sess. ch. 6. at the court-house in the same county, on the fourth Monday in January, the first Monday in May, and the fourth Monday in September, in every year, and may continue and be held until the several Saturdays next following, inclusive.

That the courts of common pleas and general sessions of the peace, in and for the county of Westchester, shall be held In Westchester county. Altered, 14th sess. ch. 25. on the fourth Mondays in January, May and September, in every year, and shall be held alternately at the court-house at the White-Plains, and at the court-house at Bedford, and may continue and be held until the several Saturdays next following, inclusive.

That the courts of common pleas and general sessions of the peace, in and for the county of Orange, shall be held on the second Tuesdays in February, May and October, in every year, and shall be held alternately at the court-house in the New-City, and at the court-house in Goshen, and may continue and be held until the several Saturdays next following, inclusive.

That the courts of general sessions of the peace, in and for the county of Ulster, shall be held at the court-house in the same county, on the first Tuesday in May, and on the third Tuesday in September, in every year, and may

continue and be held until the several Saturdays next following, inclusive; and that the court of common pleas, in and for the said county of Ulster, shall be held at the court-house in the same county, on the first Tuesdays in January, May and July, and the third Tuesday in September, in every year, and may continue and be held until the several Saturdays next following, inclusive.

That the courts of common pleas and general sessions of the peace, in and for the county of Dutchess, shall be held at the court-house in the same county, on the third Tuesdays in January and May, and the second Tuesday in October, in every year, and may continue and be held until the several Saturdays next following, inclusive.

In Columbia county. That the courts of common pleas and general sessions of the peace, in and for the county of Columbia, shall be held at the court-house at Claverack, on the second Tuesdays in January, May and September, in every year, and may continue and be held until the several Saturdays next following, inclusive.

In Washington county. That the courts of common pleas and general sessions of the peace, in and for the county of Washington, shall be held at † Salem, in the same county, on the second Tuesday in February, the last Tuesday in May, and the first Tuesday in November, in every year, and may continue and be held until the several Saturdays next following, inclusive.

And that the courts of common pleas and general sessions of the peace, in and for the county of Montgomery, shall be held at the court-house in the same county, on the second Tuesdays in February, June and October, in every year, and may continue and be held until the several Saturdays next following, inclusive.

II. *Provided always, and be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the judges and justices of the said respective courts of common pleas and general sessions of the peace respectively, when they conceive the due administration of justice will admit thereof, to adjourn the said courts respectively, to the next succeeding term, on any day preceding the last day to which the power of holding such of the said courts is hereby extended as aforesaid; and that all process which shall be issued out of the said courts respectively, shall always bear test the day on which the said respective courts shall have adjourned.

Terms of mayor's courts of New-York and Albany, extended to three days. III. *And be it further enacted by the authority aforesaid,* That the terms of the mayor's courts of the cities of New-York and Albany, shall be, and hereby are lengthened and extended to three days. Provided nevertheless, That when the business of any of the said respective courts shall be completed, the said courts may adjourn to the next term, without sitting until the end of the term; and that all process issuing out of the said respective courts, shall always be tested the day on which the court shall have adjourned.

IV. *And be it further enacted by the authority aforesaid,* That the said courts of common pleas and mayor's courts, shall be, and hereby are respectively authorised and empowered to hear, try and determine, according to law, all actions real, personal and mixed, suits, quarrels, controversies and differences, arising within the several and respective cities and counties for which the same are or shall be held.

V. *And be it further enacted by the authority aforesaid,* That the mayor, recorder and aldermen of the city of New-York, or any three of them, of

whom the mayor or recorder always to be one, shall have power to hold such courts of general sessions of the peace, and mayor's courts in the said city; any charter, law or usage to the contrary notwithstanding. And that the judges and assistant-justices of each of the other counties in this state, or any three of them, of whom one of the judges of the court of common pleas always to be one, shall have power to hold such courts of common pleas in their respective counties; any law or usage to the contrary notwithstanding.

VI. *And be it further enacted by the authority aforesaid,* That all affidavits to be taken before any justice of the supreme court, in or concerning any cause, matter or thing, depending, or hereafter to be depending, or in any wise concerning any proceedings to be had in any of the said courts of common pleas, or courts of general sessions of the peace, or mayor's courts, shall or may be read and made use of in the said courts respectively, in the same manner, and shall be of the same force and effect, to all intents and purposes, as if they were or had been taken before one of the judges or justices of the said courts of common pleas, courts of general sessions of the peace, or mayor's courts respectively.

VII. And whereas an opinion hath prevailed, that no diminution can be alledged of records removed by writ or writs of error, from any of the mayor's courts, or courts of common pleas, in the several cities and counties of this state, and that therefore not only the declaration, pleadings, verdict and judgment, but the plaint, process, continuances, and all other proceedings in each cause in the said respective courts, must be set forth specially and particularly in the record of the judgment therein, which occasions a very considerable expence to the parties, and is productive of many inconveniences: For remedy whereof, *Be it further enacted by the authority aforesaid,* That in all records of judgments hereafter to be made up and entered in any of the said courts, in any cause now depending, or hereafter to be brought therein, it shall be sufficient, immediately after the caption thereof, to enter the declaration, without setting forth or entering upon the same record, the plaint or process against the defendant or defendants; and then, if judgment is not entered, or the defendant or defendants shall not plead at the same term of which the declaration is filed, an imparlance shall be entered to the term when judgment is entered, or the plea of the defendant or defendants shall come in, without entering the continuances from term to term; and when an issue shall be joined to be tried by a jury, if the same is not tried at the next term after the joining thereof, instead of entering all the continuances from term to term, until the trial, it shall be sufficient to enter the continuance upon the record, in the following form: And hereupon the process thereof is continued between the parties aforesaid, of the plea aforesaid, in this same court, before the mayor, recorder and aldermen of the city of New-York, or Albany, or Hudson, or judges and assistant justices of the same court, as the case may be, until the term when the same issue shall be tried, or some necessary rule or order made concerning such cause, or the trial thereof, if any such shall be made. And further, That the caption of all records of judgments in the said mayor's courts, shall be in the following form: Pleas in the court of common pleas, called the mayor's court, held at (such place, or in such city as the same court shall be actually held) in and for the said city, before the mayor, recorder and aldermen of the same city, on (such day as the process against the defendant or defendants in such cause shall be returnable, and be returned served.) And that the caption of all records of

judgments in the several courts of common pleas in the several counties of this state, shall be in the following form: Pleas in the court of common pleas, held at (such place as the same court shall be actually held) in and for the county of Westchester, or other county, as the case may be, before the judges and assistant justices of the same court, on (such day as the process against the defendant or defendants in such case shall be returnable, and be returned served.) And that it shall not be necessary in any such records in any of the said mayor's courts, or courts of common pleas in the several counties, to insert the names of the mayor, recorder, aldermen, judges or assistant justices, or any of them, either in the caption of the same records, or in any continuance, or other part of the same records; nor shall it be necessary in any such record, to set forth the authority by which any such court is held.

VIII. *And be it further enacted by the authority aforesaid,* That upon the removal of any such record by writ of error, or upon error brought in any manner, upon any such judgment, it shall be lawful to alledge any diminution, or defect, or variance, or the want of any process or proceeding, in the same manner, and the like proceeding shall be thereupon had, as may or ought to be done in cases of error upon judgments in the supreme court.

IX. *And be it further enacted by the authority aforesaid,* That there shall be taken, allowed and paid, for drawing, making up and entering or engrossing every such record, in any of the said mayors courts, or other courts of common pleas, the sum of twelve shillings, and no more, to be taken by the attorney or clerk who shall do the service. And further, That no execution in any case shall be issued until the judgment is made up and signed.

X. *And be it further enacted by the authority aforesaid,* That instead of the fees allowed for drawing a declaration in any of the mayor's courts, or courts of common pleas in the several cities and counties within this state, in and by an act, entitled, An act for regulating the fees of the several officers and ministers of the courts of justice within this state; there shall be allowed paid and taken, the sum of six shillings, and for a copy of such declaration the sum of three shillings, and no more.

XI. *And be it further enacted by the authority aforesaid,* That all former laws for fixing the times and places of holding the said courts of common pleas and general sessions of the peace, and mayor's courts of the cities of New-York and Albany, shall be, and hereby are repealed.

C H A P. XI.

An ACT for the further Direction of the Commissioner of Forfeitures for the Eastern District.

Passed 5th February, 1787.

BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That it shall and may be lawful to and for the commissioner of forfeitures for the Eastern district, to sell and dispose of, at public vendue at the coffee-house in the city of New-York, all, or such parts as he shall think proper, of the forfeited estates situated in the said Eastern district; any law to the contrary hereof in any wise notwithstanding. Provided nevertheless, That the said commissioner shall have, previous to any such sales, advertised the same in two of the public news-papers printed in this state, for the term of six weeks successively.

C H A P. XII.

An ACT for preventing Usury.

Passed 8th February, 1787.

I. *BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,*

No higher interest than 7 per cent. per annum, to be taken; That no person or persons whomsoever, shall hereafter take, directly or indirectly, for loan of any monies, wares, merchandize, or other things whatsoever, above the value of seven pounds for the forbearance of one hundred pounds, for one year, and so after that rate for a greater or less sum, or for a longer or shorter time; nor take any bond, bill, note or security whatsoever, for payment of money to be lent, or to be due or payable by any means whatsoever, whereupon or whereby there shall be reserved, or taken, or included, above the rate of seven pounds in the hundred, as aforesaid. And further, That all bonds,

And all securities where more than 7 per cent. is taken declared void.

whereby there shall be reserved, or taken or secured, or agreed to be reserved or taken, above the sum of seven pounds in the hundred, as aforesaid, shall be utterly void.

Persons paying more than 7 per cent. may recover back the same &c.

II. And be it further enacted by the authority aforesaid,

That if any person or persons whomsoever, shall hereafter take, accept, or receive, by way or means of any corrupt bargain, loan, exchange, chevizance, shift, or interest of any money, wares, merchandize, or any other thing or things whatsoever, or by any deceitful ways or means, or by any covin, engine, or deceitful conveyance, for the forbearing, or giving day of payment for one whole year, of or for, his, her or their money, or other thing, above the sum of seven pounds, either in money, goods, or any other thing whatsoever, for the forbearing of one hundred pounds, for one year, and so after that rate for a greater or less sum, or for a longer or shorter time; the person or persons so paying any such sums of money, or delivering any such goods, or other thing, his, her or their executors or administrators, shall be at liberty, at any time within one year then next, to sue for and recover the money so paid, or the value of the goods or other thing so delivered, above the rate aforesaid, or any part thereof, from the person or persons who shall have taken, accepted or received the same, or from his, her or their executors or administrators, with costs of suit, by action of debt founded on this act, to be prosecuted in any court of record having cognizance of the same; in which actions it shall be sufficient for the plaintiff or plaintiffs, to alledge, that the defendant or defendants, or his, her or their testator or intestate, is or are, or were indebted to the plaintiff or plaintiffs, or to his, her or their testator or intestate, in the sum so paid, or the value of the goods or other things so delivered, over and above the rate aforesaid, whereby an action accrued to the plaintiff or plaintiffs, according to the form of the statute, entitled, An act for preventing usury, to demand and have of the defendant or defendants, or his, her or their testator or intestate, the said sum, without setting forth the special matter. And in case the person or persons so paying any such sum or sums of money, or so delivering any such goods or other thing, shall not, within the time aforesaid, really and bona fide, and without covin or collusion, commence his, her or their suit or action for the money so paid, or

for the value of the goods or other things so delivered as aforesaid, or shall suffer such suit or action to be delayed or discontinued, then it shall and may be lawful for any other person or persons, within one year after such neglect, discontinuance or delay, by any such action or suit as aforesaid, to sue for and recover the same in manner aforesaid, with costs of suit, against the person or persons who shall have taken, accepted or received the same, his, her or their executors or administrators; the one moiety thereof to the use of the person or persons who will prosecute for the same with effect, and the other moiety thereof to the use of the poor of the town or place where the offence shall be committed.

III. *And be it further enacted by the authority aforesaid,* That no scrivener, broker, solicitor, or driver of bargains or contracts, shall hereafter take or receive, directly or indirectly, any sum or sums of money, reward, goods, Premium allowed or other thing, for brokage, soliciting, driving, or procuring the loan or forbearance of any sum or sums of money, over and above the rate or value of ten shillings, for the loan or forbearance of one hundred pounds, for one year, and so in proportion for a greater or less sum; or above three shillings for making or renewing any bond, bill, note or other security, for the loan or forbearance thereof, or for any counter bond, bill, or other security concerning the same. And in case any scrivener, broker, solicitor, or driver of bargains or contracts, or any other person or persons shall take, accept or receive, directly or indirectly, any sum or sums of money, reward, goods, or other thing, or any deposit or security, for brokage, soliciting, driving, or procuring the loan or forbearance of any sum or sums of money, over and above the rate or value of ten shillings, for the loan or forbearance of one hundred pounds, for one year, and so in proportion for a greater or less sum; the person or persons so paying such sum or sums, or delivering or depositing any such goods, or other thing, above the rate aforesaid, or his, her or their executors or administrators, shall be at liberty, at any time within one year after paying or delivering the same, to sue for and recover the money so paid, and the value of the goods or other thing so delivered or deposited above the rate aforesaid, or any part thereof, from the person or persons who shall have taken, accepted or received the same, or from his, her or their executors or administrators, with costs of suit, by action of debt, founded on this act, to be prosecuted in any court of record having cognizance of the same; in which actions it shall be sufficient for the plaintiff or plaintiffs to alledge, that the defendant or defendants, or he, her or their testator or intestate, is or are, or were indebted to the plaintiff or plaintiffs, his, her or their testator or intestate, in the sum so paid, or the value of the goods or other thing so delivered or deposited, over and above the rate aforesaid, whereby an action accrued to the plaintiff or plaintiffs, or he, her or their testator or intestate, according to the form of the statute, entitled, An act for preventing usury, to demand and have of the defendant or defendants, or his, her or their testator or intestate, the said sum, without setting forth the special matter. And in case the person or persons so paying such sum or sums of money, or delivering or depositing any such goods, or other thing, or his, her or their executors or administrators, shall, within the time aforesaid, really and bona fide, and without fraud or collusion, commence his, her or their suit or action for the money so paid, for the value of the goods or other things so delivered or deposited as aforesaid, over and above the rate aforesaid, or shall suffer such suit to be delayed or discontinued; then it shall and may be lawful for any other person

or persons, within one year after such neglect, discontinuance or delay, by any such action or suit as aforesaid, to sue for and recover the same in manner aforesaid, with costs of suit, against the person or persons who shall have taken, accepted or received the same, his, her or their executors or administrators; the one moiety thereof to the use of the person or persons who shall prosecute for the same with effect, and the other moiety thereof to the use of the poor of the town or place where the offence shall be committed.

IV. And for the better discovery of the money, goods or other things so taken, accepted or received as aforesaid, upon or for the loan or forbearance of money, goods, or other things, or for brokage, soliciting, driving, or procuring the loan or forbearance of any sum or sums of money; *Be it further enacted by the authority aforesaid,* That all and every the person or persons who, by virtue of this act, shall or may be liable to be sued for the same, shall be obliged and compellable to answer, upon oath, such bill or bills as shall be preferred against him, her or them, in the court of chancery, for discovering the sum or sums of money, goods, or other thing, so taken, accepted or received, as aforesaid. And further, That upon the discovery and repayment or return of the money, goods, or other thing so to be discovered, the person or persons who shall so discover and repay or return the same as aforesaid, with costs of suit, shall be acquitted and discharged from any further or other punishment, forfeiture or penalty, which he, she or they may have incurred or become liable to, by taking, accepting or receiving such money, goods or other thing so discovered, and repaid or returned as aforesaid.

V. *And be it further enacted by the authority aforesaid,* That the act, entitled, An act for lowering the interest of money to seven per cent. passed the 16th of December, 1737, be, and the same is hereby repealed. Provided, That such repeal shall not be construed to affect any suits already commenced, or which hereafter may be commenced, for any penalties heretofore incurred by force of the said act; or to affect the right and benefit of pleading the said statute in bar to any suit already brought, or hereafter to be brought, upon any contract heretofore made; but such suits may be prosecuted, and such pleas made and allowed, and judgments thereupon given in the same manner as if this present act had not been passed.

C H A P. XIV.

An ACT to reduce the Laws concerning Costs, into one Statute.

Passed 12th February, 1787.

I. *BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That if any person or persons shall commence or sue in any court of record within this state, any action, bill or plaint of debt, covenant, trespass upon the case, detinue, account, or upon any statute, for any offence or wrong personal, immediately supposed to be done to the plaintiff or plaintiffs, trespass, ejectment, or any other action whatsoever, real, personal or mixt; and the plaintiff or plaintiffs, demandant or demandants, shall, by verdict or otherwise, recover damages in any such action, bill or plaint, that then the plaintiff or plaintiffs, demandant or demandants, in every such action, bill or plaint shall have judgment to recover his, her or their costs, against every such defendant or defendants, to be assessed and taxed by the discretion of the court where any such action, bill or plaint shall be commenced, sued or taken; and

shall be levied and recovered, together with the debt or damages aforesaid, against the body or bodies, or goods and chattels, lands and tencements of the defendant or defendants.

II. *And be it further enacted by the authority aforesaid,* That if any person or persons shall commence or sue, in any court of record within this state, any action, bill or plaint whatsoever as aforesaid, wherein the plaintiff or plaintiffs, demandant or demandants, might have costs (if in case judgment should be given for him, her or them) and the plaintiff or plaintiffs, demandant or demandants, in any such action, bill or plaint, after appearance of the defendant or defendants, be non-suited, or that any verdict happen to pass by any lawful trial against the plaintiff or plaintiffs, demandant or demandants, in any such action, bill or plaint, that then the defendant or defendants, in every such action, bill or plaint, shall have judgment to recover his costs against every such plaintiff and plaintiffs (except against executors or administrators prosecuting the right of their testators or intestates) demandant or demandants, to be assessed and taxed by the discretion of the court where any such action, bill or plaint shall be commenced, sued and taken as aforesaid; and also, that every defendant or defendants, shall have such process and execution for the recovery and having of his, her and their costs against the same plaintiff or plaintiffs, demandant or demandants, as the same plaintiff or plaintiffs, demandant or demandants, should or might have had against the defendant or defendants, in case that judgment had been given for the said plaintiff or plaintiffs, demandant or demandants, in any such action, bill or plaint.

III. *And be it further enacted by the authority aforesaid,* That every avowant, and every other person or persons that make avowry, justification or cognizance, as bailiff, or servant to any person or persons, in any replevin or second deliverance, if the same avowry, cognizance or justification, be found for them, or the plaintiff or plaintiffs in the same be non-suit, or otherwise barred, that then they shall recover their damages and costs against the said plaintiff or plaintiffs, as the same plaintiff or plaintiffs should have done, if he, she or they had recovered in the same replevin or second deliverance, if the same had been found against the defendant or defendants.

IV. *And be it further enacted by the authority aforesaid,* That if any action, bill, plaint, suit or cause, not concerning any freehold, or inheritance, or title of land, nor for any assault, battery or imprisonment, nor for slander, nor replevin, nor malicious prosecution, which have been or shall be brought or commenced in any of the courts of common pleas, or mayors courts,

Where plaintiff does not recover above ten pounds, he is to pay costs. *in any of the cities or counties of this state, if the plaintiff shall not recover above the sum of ten pounds, not having caused an affidavit on oath to be made and filed before the commencing such suit or action, that the debt due, or dam-*

See 12th sess. ch. 28. sec. 6. *age sustained, or the value of the thing in demand exceed the sum of ten pounds, then, and in every such case, the plaintiff shall not recover any costs of suit, but the court shall award that the plaintiff shall pay to the defendant, his or her costs, to be taxed; for which the defendant shall have execution against the body or lands, and goods and chattels of the plaintiff.*

V. *And be it further enacted by the authority aforesaid,* That in all actions of trespass, and assault and battery, commenced or prosecuted in the supreme court, wherein the judge at the trial of the cause shall not find and

or persons, within one year after such neglect, discontinuance or delay, by any such action or suit as aforesaid, to sue for and recover the same in manner aforesaid, with costs of suit, against the person or persons who shall have taken, accepted or received the same, his, her or their executors or administrators; the one moiety thereof to the use of the person or persons who shall prosecute for the same with effect, and the other moiety thereof to the use of the poor of the town or place where the offence shall be committed.

IV. And for the better discovery of the money, goods or other things so taken, accepted or received as aforesaid, upon or for the loan or forbearance of money, goods, or other things, or for brokage, soliciting, driving, or procuring the loan or forbearance of any sum or sums of money; *Be it further enacted by the authority aforesaid,* That all and every the person or persons who, by virtue of this act, shall or may be liable to be sued for the same, shall be obliged and compellable to answer, upon oath, such bill or bills as shall be preferred against him, her or them, in the court of chancery, for discovering the sum or sums of money, goods, or other thing, so taken, accepted or received, as aforesaid. And further, That upon the discovery and repayment or return of the money, goods, or other thing so to be discovered, the person or persons who shall so discover and repay or return the same as aforesaid, with costs of suit, shall be acquitted and discharged from any further or other punishment, forfeiture or penalty, which he, she or they may have incurred or become liable to, by taking, accepting or receiving such money, goods or other thing so discovered, and repaid or returned as aforesaid.

V. *And be it further enacted by the authority aforesaid,* That the act, entitled, An act for lowering the interest of money to seven per cent. passed the 16th of December, 1737, be, and the same is hereby repealed. Provided, That such repeal shall not be construed to affect any suits already commenced, or which hereafter may be commenced, for any penalties heretofore incurred by force of the said act; or to affect the right and benefit of pleading the said statute in bar to any suit already brought, or hereafter to be brought, upon any contract heretofore made; but such suits may be prosecuted, and such pleas made and allowed, and judgments thereupon given in the same manner as if this present act had not been passed.

C H A P. XIV.

An ACT to reduce the Laws concerning Costs, into one Statute.

Passed 12th February, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That if any person or persons shall commence or sue in any court of record within this state, any action, bill or plaint of debt, covenant, trespass upon the case, detinue, account, or upon any statute, for any offence or wrong personal, immediately supposed to be done to the plaintiff or plaintiffs, trespass ejectment, or any other action whatsoever, real, personal or mixt; and the plaintiff or plaintiffs, demandant or demandants, shall, by verdict or otherwise, recover damages in any such action, bill or plaint, that then the plaintiff or plaintiffs, demandant or demandants, in every such action, bill or plaint shall have judgment to recover his, her or their costs, against every such defendant or defendants, to be assessed and taxed by the discretion of the court where any such action, bill or plaint shall be commenced, sued or taken; and

shall be levied and recovered, together with the debt or damages aforesaid, against the body or bodies, or goods and chattels, lands and tenements of the defendant or defendants.

II. *And be it further enacted by the authority aforesaid,* That if any person or persons shall commence or sue, in any court of record within this state, any action, bill or plaint whatsoever as aforesaid, wherein the plaintiff or plaintiffs, demandant or demandants, might have costs (if in case judgment should be given for him, her or them) and the plaintiff or plaintiffs, demandant or demandants, in any such action, bill or plaint, after appearance of the defendant or defendants, be non-suited, or that any verdict happen to pass by any lawful trial against the plaintiff or plaintiffs, demandant or demandants, in any such action, bill or plaint, that then the defendant or defendants, in every such action, bill or plaint, shall have judgment to recover his costs against every such plaintiff and plaintiffs (except against executors or administrators prosecuting the right of their testators or intestates) demandant or demandants, to be assessed and taxed by the discretion of the court where any such action, bill or plaint shall be commenced, sued and taken as aforesaid; and also, that every defendant or defendants, shall have such process and execution for the recovery and having of his, her and their costs against the same plaintiff or plaintiffs, demandant or demandants, as the same plaintiff or plaintiffs, demandant or demandants, should or might have had against the defendant or defendants, in case that judgment had been given for the said plaintiff or plaintiffs, demandant or demandants, in any such action, bill or plaint.

III. *And be it further enacted by the authority aforesaid,* That every avowant, and every other person or persons that make avowry, justification or cognizance, as bailiff, or servant to any person or persons, in any replevin or second deliverance, if the same avowry, cognizance or justification, be found for them, or the plaintiff or plaintiffs in the same be non-suit, or otherwise barred, that then they shall recover their damages and costs against the said plaintiff or plaintiffs, as the same plaintiff or plaintiffs should have done, if he, she or they had recovered in the same replevin or second deliverance, if the same had been found against the defendant or defendants.

IV. *And be it further enacted by the authority aforesaid,* That if any action, bill, plaint, suit or cause, not concerning any freehold, or inheritance, or title of land, nor for any assault, battery or imprisonment, nor for slander, nor replevin, nor malicious prosecution, which have been or shall be brought or commenced in any of the courts of common pleas, or mayors courts, or in any of the cities or counties of this state, if the plaintiff shall not recover above the sum of ten pounds, not having caused an affidavit on oath to be made and filed before the commencing such suit or action, that the debt due, or dam-

Where plaintiff does not recover above ten pounds, he is to pay costs.

See 12th sess. ch. 28. sec. 6.

age sustained, or the value of the thing in demand exceed the sum of ten pounds, then, and in every such case, the plaintiff shall not recover any costs of suit, but the court shall award that the plaintiff shall pay to the defendant, his or her costs, to be taxed; for which the defendant shall have execution against the body or lands, and goods and chattels of the plaintiff.

V. *And be it further enacted by the authority aforesaid,* That in all actions of trespass, and assault and battery, commenced or prosecuted in the supreme court, wherein the judge at the trial of the cause shall not find and

certify under his hand, upon the back of the record, that an assault and battery was sufficiently proved by the plaintiff against the defendant, or that the freehold or title of the land mentioned in the plaintiff's declaration, was chiefly in question, the plaintiff in such action, in case the jury shall find the damages to be under the value of forty shillings, shall not recover or obtain more costs of suit than the damages so found shall amount unto: And if any more costs in any such action shall be awarded, the judgment shall be void, and the defendant shall, by this act, be acquitted of and from the same, and may have his action against the plaintiff for such vexatious suit, and recover his damages and costs of such suit, in any of the said courts of record.

VI. *And be it further enacted by the authority aforesaid,* That in all actions upon the case, for slanderous words, to be sued or prosecuted by any person or persons in the supreme court, if the jury, upon the trial of the issue in such action, or the jury that shall enquire of the damages, do find or assess the damages under forty shillings, then the plaintiff or plaintiffs in such action, shall have and recover only so much costs, as the damages so given or assessed, amount unto, without any further increase of the same.

VII. *And be it further enacted by the authority aforesaid,* That in all actions of trespass to be commenced and prosecuted in any court of record within this state, wherein at the trial of the cause it shall appear and be certified by the judge, under his hand, upon the back of the record, that the trespass upon which any defendant shall be found guilty, was wilful and malicious, the plaintiff shall recover not only his damages, but his full costs of suit; any thing in this act contained to the contrary notwithstanding.

VIII. *And be it further enacted by the authority aforesaid,* That in all suits upon any writ or writs of scire facias, and suits upon prohibitions, the plaintiff obtaining judgment, or any award of execution, after plea pleaded, or demurrer joined therein, shall likewise recover his costs of suit; and if the plaintiff shall become non-suit, or suffer a discontinuance, or a verdict shall pass against him, the defendant shall recover his costs, and have execution for the same in manner aforesaid.

IX. *And be it further enacted by the authority aforesaid,* That where several persons are or shall be made defendants to any action, bill or plaint of trespass, assault, false imprisonment, or ejection, and any one or more of them shall be, upon the trial thereof, acquitted by verdict, every person or persons so acquitted, shall have and recover his or her costs of suit, in like manner as if a verdict had been given against the plaintiff or plaintiffs, and acquitted all the defendants, unless the judge before whom such cause shall be tried, shall immediately after the trial thereof, in open court, certify upon the record, under his hand, that there was a reasonable cause for the making such person or persons a defendant or defendants, to such action, bill or plaint.

X. *And be it further enacted by the authority aforesaid,* That when and as often as any person or persons shall sue forth, or by any means cause or procure to be sued forth, out of any court, any bill, latitat, capias, alias, or pluries capias, against any person or persons, who upon the same writ or writs, or process, shall happen to be imprisoned, or shall, upon the return of the same writ or writs, or process, appear and put in bail, to answer such suit as shall be objected against him, her or them, according to the common order or practice of such court; then, and in every such case, if the party or parties, at whose suit the same writ or writs, or process, was or were obtained

or sued forth, do not, before the end of the next term or court, after the return of the same writ or writs, or process, or after such bail had and taken, put into the same court, his, her or their bail or declaration, against the same party or parties, against whom such writ or writs, or process, hath been, or shall be sued; or if after a declaration had and put into the same court, the plaintiff or plaintiffs, in such case, shall not prosecute the same with effect, but shall willingly and apparently to the same court suffer his, her or their suit to be delayed, or shall suffer the same suit to be discontinued, or otherwise shall be non-suit in the same, then and in every such case, such court shall or may, at their discretion, award and adjudge, to every such person and persons so arrested, vexed, molested, or troubled by such writ or writs, or process, or suit, his, her and their costs, damages and charges, by any means sustained by occasion of any such writ or writs, process, arrest or suits, taken, sued, or had against him, her or them, to be paid by such person or persons so causing or procuring any such writ or writs, or process, to be sued forth, as aforesaid; and for which costs, damages or charges, the person or persons to whom the same shall be awarded or adjudged, shall and may have like execution as aforesaid.

Costs given against
plaintiffs on demurrer
and writs of error.

XI. *And be it further enacted by the authority aforesaid,* That if at any time hereafter, any person or persons shall commence or prosecute in any court of record, any action, plaint or suit, wherein, upon any demurrer, either by plaintiff or defendant, demandant or tenant, judgment shall be given by the court against such plaintiff or defendant; or if at any time after judgment given for the defendant or tenant, in any such action, plaint or suit, the plaintiff or demandant shall sue any writ or writs of error, to annul the said judgment, and the said judgment shall afterwards be affirmed to be good, or the said writ of error shall be discontinued, or the plaintiff shall be non-suit therein, the defendant or tenant, in every such action, plaint, suit or writ of error, shall have judgment to recover his costs against every such plaintiff or plaintiffs, demandant or demandants, and have execution for the same, in like manner as aforesaid.

XII. *And be it further enacted by the authority aforesaid,* That if any defendant or defendants, tenant or tenants, or any other person or persons, that shall be bound by any judgment obtained in any court of record, shall sue, before execution had, any writ of error, to reverse any such judgment in delay of execution; that then, if the same judgment be affirmed good in the said writ of error, and not erroneous, or if the said writ be discontinued in the default of the party, or if any person or persons that sueth any writ of error be non-suited in the same, that then the said person or persons against whom the said writ of error is so sued, shall recover his, her or their costs and damages, for his, her or their delay and wrongful vexation in the same, to be assessed and taxed by the discretion of the justices or court before whom the said writ of error is returnable, and have execution for the same in manner aforesaid.

XIII. *And be it further enacted by the authority aforesaid,* That if any person or persons shall sue or prosecute any writ or writs of error, for reversal of any judgment whatsoever, given after any verdict in any of the courts aforesaid, and the judgment shall afterwards be affirmed, then every such person or persons shall pay unto the defendant or defendants in the said writ or writs of error, his, her or their double costs, to be assessed by the court where such writ of error shall be depending, for the delaying of execution.

On writs of error quashed, the defendant to have costs.

XIV. *And be it further enacted by the authority aforesaid,* That upon the quashing any writ of error for variance from the original record, or other defect, the defendant or defendants in such writ of error, shall recover, against the plaintiff or plaintiffs issuing out such writ, his, her or their costs, as he, she or they should have had, if the judgment had been affirmed, and to be recovered in the same manner.

Capias pro fine taken away in certain cases.

XV. *And be it further enacted by the authority aforesaid,* That no writ or writs, commonly called capias pro fine, in any suit or action of trespass, ejectment, assault, and false imprisonment, in any court of record, be sued out or prosecuted against any defendant or defendants, or any further process thereupon, but the same fines are and shall hereby be remitted and forever discharged.

XVI. *And for preventing vexatious suits in courts of equity ; Be it further enacted by the authority aforesaid,* That upon the plaintiff's dismissing his own bill, or the defendant's dismissing the same, for want of prosecution, the plaintiff in the suit shall pay to the defendant or defendants, his, her or their full costs, to be taxed by a master.

Defendants to pay costs in suits for debts due to the state.

XVII. *And be it further enacted by the authority aforesaid,* That in all suits commenced, or to be commenced, upon any obligation or specialty, made or to be made to the people of the state of New-York, or to any person or persons, to or for their use, the people of this state, or other plaintiff or plaintiffs, shall have and recover both the debt and costs, and damages, as any other common persons may do in suits for their debts.

Defendants not to have costs in suits brought for debts due to the state.

XVIII. *And be it further enacted by the authority aforesaid,* That where any suit on action is or shall be commenced, sued and prosecuted, by and in the name of any person or persons, for any debt, sum or sums of money, due, owing or belonging to the people of this state, and the plaintiff or plaintiffs shall be non-sued therein, or if a verdict shall pass against such plaintiff or plaintiffs, the defendant or defendants shall not recover any costs against such plaintiff or plaintiffs.

XIX. *Provided always, and be it further enacted by the authority aforesaid,* That nothing in this act contained, shall extend to any popular action, nor to any action to be prosecuted by any person in behalf of himself and the people of this state, upon any penal statute ; nor to any indictment, presentment, inquisition or appeal.

C H A P. XV.

Amended,
14th sess. ch. 5.

An ACT for regulating Elections.

Passed 13th February, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That

Elections to be by ballot, &c. all elections for governor, lieutenant-governor, senators and members of assembly, shall be by ballot ; and that such elections shall be held, not by counties, but by wards, in the cities of New-York and Albany ; and by cities, towns, manors, precincts and districts, in all other parts of this state ; and for that purpose, the last Tuesday in April,

On last Tuesday in April, yearly. in every year, forever hereafter, shall be the anniversary day on which such elections shall respectively be held, and

from which the same shall be respectively continued by adjournments, if necessary, from day to day, not exceeding five days, until the same shall respectively be completed.

II. *And be it further enacted by the authority aforesaid,* That the respective town-clerks, supervisors and assessors of the several cities, towns, manors, precincts and districts in this state, for the time being, or the majority of them, or the survivors of them, or the majority of such survivors, shall, from time to time, be the inspectors of the said election in each city, town, manor, district and precinct respectively, except in the cities of New-York and Albany, wherein the appointment shall be as follows; That is to say, That the mayor, recorder, aldermen and assistants, or common-council men, shall convene together in common council, at the city-hall of the said cities respectively, on the first Tuesday of April, in every year; and then and there shall, by plurality of voices, elect from among the substantial freeholders actually resident in each ward in the said cities respectively, three persons for inspectors of the then ensuing election, to be held in the several wards of the said cities respectively, for governor, lieutenant-governor, senator or senators, and members of assembly, or such of them as by the constitution of this state and this act, shall be to be chosen at such election.

Clerk of the senate III. *And be it further enacted by the authority aforesaid,* to give notice of That the clerk of the senate for the time being, shall forth-choosing governor, with, in the present year, and between the first day of January and the first day of March, in every year hereafter, lieutenant governor, and senators.

See 13th sess. ch. 35. inclose and send in writing under his hand, to the several sheriffs of the different counties in the respective great districts in this state, a notification of the names of the senators for each respective district, whose seats are to become vacant at the expiration of the year; and of the names of those, if any, whose seats are become vacant, by death or otherwise; and of the number of senators to be elected in such district at the next ensuing election. And also that a governor, and lieutenant-governor, or a lieutenant-governor only (as the case may require) is or are to be chosen at the then next election, if any such choice shall be necessary. And in case of the death or inability, or of the removal of such clerk out of this state, it shall be the duty of the secretary of this state, and he is hereby enjoined to do all and every thing and things, which the said clerk is hereby enjoined to do. And each sheriff shall, without delay, transmit a copy of such notification to some one inspector in each ward, town, manor, district and precinct respectively in his county; and also affix a copy of the same notification upon the door of the court-house in his county.

IV. *And be it further enacted by the authority aforesaid,* That each inspector, upon receiving such notification as aforesaid, shall immediately give notice thereof to the other inspectors of the same ward, town, manor, precinct or district; and the several and respective inspectors for each respective ward, town, manor, precinct and district, or the major part of them, shall, without delay, convene together, and by writing under their respective hands, to be affixed in at least three of the most public places of such ward, town, manor, precinct or district respectively, give eight days notice of the place (which shall be the most public and convenient for the purpose) within the same, where such election for a governor, lieutenant-governor, senator or senators, and members of assembly, or such of them as shall then be to be chosen, then next shall be held within the same, on the anniversary day hereby appointed for that purpose; and on such day, and at such place, the several inspectors

attending, which shall be the major part of them, shall, in full view and hearing of the people, administer to each other, and respectively take, at the opening of the election, the following oath, viz.

I do solemnly and sincerely declare and swear, in the presence of Almighty God, That I will in all things, well, faithfully, honestly and impartially, and according to the best of my knowledge and abilities, execute the office of inspector of this election.

And further, That at every such election as aforesaid, capable and sufficient clerks, not less than two for each ward, town, manor, district and precinct respectively, shall be appointed by the inspectors, or the major part of them, to be the clerks of every such court of election as aforesaid, respectively; each of whom shall keep a poll-list at every such election, under the direction and view of the said inspectors respectively, or the major part of them; and the said inspectors, or the major part of them respectively, shall preside at every such election, and conduct and direct the same according to the regulations herein prescribed, and be the returning officers thereof respectively, in manner herein after directed; and before admitting any person to vote at any such election, shall administer to each clerk, who is hereby required to take the following oath, viz.

I do solemnly and sincerely declare and swear, in the presence of Almighty God, That I will faithfully, truly, honestly and impartially, enter and keep the poll-lists at this election; and in all things will faithfully, truly, honestly and impartially, according to the best of my knowledge and abilities, do, perform and fulfil my duty, as a clerk thereof.

And the inspectors and clerks being thus sworn, the said inspectors shall cause proclamation to be three times made, with a loud voice, as follows, viz.

HEAR ye! hear ye! hear ye! The poll of this election is opened, and all manner of persons attending the same, are strictly charged and commanded, by the authority and in the name of the people of this state, to keep the peace thereof, during their attendance at this election, upon pain of imprisonment.

Which proclamation shall be in like manner made at the opening of the poll, upon every adjournment thereof; and on every adjournment of the poll, and on the closing thereof, proclamation thereof respectively shall be made with a loud voice. Provided always, That the proclamation voted by the same shall be closed, shall be preceded by a proclamation, to be made three hours before the closing of the poll, that the same will be closed at the expiration of three hours. And the poll of every such election shall only be held open in the day time, and not before sun-rise nor after sun-set.

Poll to be held open only in the day time.

Poll-lists for governor, &c. to be kept separately.

V. And be it further enacted by the authority aforesaid That the poll-lists for governor, lieutenant-governor and senators, or such of them as shall be to be chosen at any such election, shall be kept distinct and separate from those for members of Assembly; and that no person shall vote, at any such election out of the ward, town, manor, precinct or district wherein he shall actually reside.

Mode of conducting elections for governor, lieutenant-governor and senators. VI. *And be it further enacted by the authority aforesaid,* That the mode of conducting every such election as aforesaid, shall be as follows, to wit ; Every person respectively, who shall be qualified according to the constitution of this state, and this law, to vote for governor, lieutenant-governor and senators, shall, at such election, openly deliver his ballot for governor, lieutenant-governor and senators, or such of them as shall be then to be chosen, to one of the inspectors, who shall receive the same in the presence of the other inspectors attending at such election ; which ballot shall be a paper ticket, containing the name of a person for governor, and the name of a person for lieutenant-governor, and the names of so many persons for senators, as shall be then to be chosen in that district wherein the elector shall reside, or such and so many of them respectively as are then to be chosen, and such elector shall think proper to vote for, severally written upon the same paper ticket, and distinguishing who is voted for as governor, when a governor is to be chosen, and who is voted for as lieutenant-governor, when a lieutenant-governor is to be chosen, and who are voted for as senators. And the said paper ticket shall be so folded or rolled up and tied, or otherwise closed, as to conceal the writing thereon. And on receipt of every ballot or ticket for governor, lieutenant-governor and senators, or any or either of them, the inspectors shall cause the name of the elector to be entered in the books or poll-lists for governor, lieutenant-governor and senators, or such of them as are then to be chosen, by all the clerks, and shall cause the ballot, without suffering the same to be inspected, to be put into a box to be provided for the purpose of receiving the ballots for governor, lieutenant-governor and senators, or such of them as are then to be chosen, with a sufficient lock thereto ; and which box shall be locked, and the key thereof be kept, during the election, by one of the inspectors attending such election, to be appointed for the purpose by the major part of them ; and a small hole shall be made in the lid or cover of the box, sufficient only to receive each ballot, and through which all the ballots shall be put into the box ; and which box shall only be opened at the times herein after mentioned.

And further, That every person who shall be qualified according to the constitution of this state, and this law, to vote for members of assembly, shall, at such election, openly deliver his ballot for members of assembly, to one of the inspectors, who shall receive the same in the presence of the other inspectors attending at such election, and which ballot shall be a paper ticket, containing the names of so many persons for members of assembly, as are then to be chosen for the county wherein such elector shall then reside, or so many of them as such elector shall think proper to vote for, severally written upon the same paper ticket ; and the said paper ticket shall be so folded or rolled up and tied, or otherwise closed, as to conceal the writing thereon : And on receipt of every ballot or ticket for members of assembly, the inspector shall cause the name of the elector to be written in the books or poll-lists for members of assembly, by all the clerks, and shall cause the ballot, without suffering the same to be inspected, to be put into a box to be provided for the purpose of receiving the ballots for members of assembly, with a sufficient lock thereto ; and which box shall be locked, and the key thereof be kept, during the election, by one of the inspectors attending such election, to be appointed for the purpose by the major part of them ; and a small hole shall be made in the lid or cover, sufficient only to receive each ballot, and through which all the

ballots for members of assembly shall be put into the box, and which box shall only be opened at the times herein after mentioned.

How the poll lists to be disposed of, on the adjournment of the poll.

And further, That on every adjournment of the poll, the clerks' books, or poll-lists for governor, lieutenant-governor, senators and members of assembly, or such of them as are then to be chosen, shall be carefully compared in the presence of the inspectors, and any mistakes in either of them, shall be corrected according to the judgment of the major part of the inspectors; whereupon the boxes shall be opened, the books or poll-lists put into them respectively, and the boxes then locked with the books or poll-lists therein, and the keys delivered to such one of the inspectors, as the majority of them shall appoint: And the seal or seals of one or more of the inspectors, shall be put upon the said boxes, so as to cover the holes in the lids thereof. And the boxes shall then be delivered to such other one of the inspectors attending such election, as a majority of them shall direct, who shall carefully keep the same, and shall, without having suffered the same to be opened, or the said seal or seals to be broken or removed, deliver the same boxes in at the election table, at the next opening of the poll, in the presence of all the spectators attending on the said election; when and where the seals shall be broken, and the boxes opened, and the poll-books or lists taken out, and the boxes again locked, in order to proceed in the said election; which course shall be observed and pursued until the poll be closed.

VII. And be it further enacted by the authority aforesaid, That whenever any person shall present himself to give his vote or ballot, at any such election as aforesaid, as a freeholder qualified by the constitution of this state to vote for a

governor or lieutenant-governor, and either of the inspectors shall suspect, or any other person entitled to vote at such election shall challenge him to be unqualified for the purpose, the inspectors shall tender and administer to him the following oath, to wit:

I do solemnly and sincerely swear and declare, in the presence of Almighty God, That I am possessed of a freehold in my own right (or in the right of my wife, as the case may be) of the value of one hundred pounds, within this state, over and above all debts charged thereon; and that I am an actual resident of the ward, town, manor, district or precinct of _____ in the county of _____ (as the case may be) and have not been before polled in any part of this state, at this election.

And that whenever any person shall present himself to give his vote for senators, and either of the inspectors shall suspect, or any person entitled to vote at such election shall challenge him to be unqualified for the purpose the inspectors shall tender and administer to him the following oath, to wit:

I do solemnly and sincerely swear and declare, in the presence of Almighty God, That I am possessed of a freehold in my own right (or in the right of my wife, as the case may be) of the value of one hundred pounds, within the county of _____ in the _____ district (as designated by the constitution of this state) over and above all debts charged thereon; and that I am an actual resident of the ward, town, manor, district or precinct of _____ in this county (as the case may be) and have not been before polled in any part of this state, at this election.

And that whenever any man shall present himself to give his vote or ballot for members of assembly only, and either of the said inspectors shall suspect

or any person present, and entitled to vote at such election, shall challenge him to be unqualified for the purpose, the inspectors shall tender and administer to him the following oath, viz.

I do solemnly and sincerely swear and declare, in the presence of Almighty God, That I am, and have been for six months next and immediately preceding this election, a freeholder, and possessed of a freehold in my own right (or in my wife's right, as the case may be) of the value of twenty pounds, in the county of _____ or have, for six months next and immediately preceding this election, rented a tenement of the yearly value of forty shillings, within the county of _____ and have been rated, and actually paid taxes to this state; and that I now am an actual resident of the ward, town, manor, district or precinct of _____ (as the case may be) and that I have not been polled before in any part of the said county, at this election.

Elector refusing to take the oath, to lose his vote.

What freemen of New-York and Albany entitled to vote.

And in case the elector shall refuse to take the said oath, when so tendered to him as aforesaid, he shall lose his vote at the said election. Provided nevertheless, That nothing herein before contained shall be construed to deprive the persons who were freemen of the city of New-York, on the fourteenth day of October, in the year of our Lord one thousand seven hundred and seventy-five, or freemen of the city of Albany, on the twentieth day of April, in the year of our Lord one thousand seven hundred and seventy-seven, and who shall be actually and usually resident in the said cities respectively, and who may refuse to take the oath last above contained, of the right of voting for representatives in assembly in the said cities, reserved to them by the seventh article of the constitution of this state. Provided also, That whenever any man shall present himself to give his vote or ballot as a freeman of the said city of New-York, or city of Albany, for representatives in Assembly, and either of the inspectors shall suspect him to be unqualified for the purpose, they shall tender to him the following oath, to wit:

I do solemnly and sincerely swear and declare, in the presence of Almighty God, That I now am, and was a freeman of the city of New-York, before the fifteenth day of October, in the year of our Lord one thousand seven hundred and seventy-five, or a freeman of the city of Albany, before the twenty-first day of April, in the year of our Lord one thousand seven hundred and seventy-seven (as the case may be) and that I now am an actual resident in _____ ward of the city of New-York (or Albany, as the case may be) and that I have not been polled before at this election, in any part of this state.

And in case such elector shall refuse to make such oath, when tendered to him as aforesaid, he shall lose his vote at the said election.

An oath to be tendered to disaffected electors. **VIII.** *And be it further enacted by the authority aforesaid,* That at every such election, the inspector shall tender and administer to each elector presenting himself to vote at such election, if any or either of them shall suspect that such elector is not well affected to the government of this state, the following oath, to wit:

I do solemnly, without any mental reservation or equivocation whatever, swear and declare, and call God to witness, That I do abjure and renounce all allegiance and subjection to the king of Great-Britain, and

to all and every other foreign king, prince, potentate and state whatsoever; and that I will bear true faith and allegiance to the state of New-York, as a free and independent state; and that I will, in all things, to the best of my knowledge and ability, do my duty as a good and faithful citizen of the said state ought to do.

And if any elector shall refuse to take the said oath, when tendered to him as aforesaid, he shall not be permitted to vote at such election. And if at any such election the inspectors shall receive the vote or ballot of any elector, who, upon being tendered the said oath, shall refuse to take the same, the person or persons so offending, shall, for each offence, forfeit the sum of five pounds, to any person who will sue for the same, to be recovered, with costs. And further, It shall and may be lawful for the inspectors, at any such election, and they are hereby required to administer the said oath to any elector who shall voluntarily offer to take the same.

• How poll-lists and ballots for governor, lieutenant-governor, and senators, to be disposed of on closing the poll.

IX. *And be it further enacted by the authority aforesaid,* That on closing the poll at every such election, the poll-books or lists for governor, lieutenant-governor and senators, or such of them as were to be chosen at such election, shall, after due examination and correction thereof, be signed by the inspectors attending the closing of the poll, and clerks who shall have kept the same poll-books or lists respectively; and the box containing the ballots or tickets for governor, lieutenant-governor and senators, or such of them as were to be chosen at such election, shall then be opened, and the ballots or tickets contained therein, be taken out, and without being inspected, shall, together with the poll-books or lists, be immediately put up under cover, and inclosed, and the inclosure bound with tape, and sealed in such manner as to prevent its being opened without discovery; and the inspectors present at closing the poll, shall then put their seals, and write their names upon the same inclosure; and one of the inspectors then present, to be appointed for that purpose by a majority of them, shall deliver the same inclosure, so sealed up as aforesaid, to the sheriff of the county, without delay.

• How poll-lists and ballots for members of assembly to be disposed of.

And further, That the poll-books, or lists for members of assembly, shall, on closing the poll at every such election, after due examination and correction, be signed by the inspectors attending at the closing of the poll, and the clerks who shall have kept the same poll-books or lists respectively; and then the box containing the ballots or tickets for members of assembly, shall be opened, and the ballots or tickets contained therein taken out, and without being inspected, shall, together with the poll-books, or lists for members of assembly, be immediately put up under cover, and inclosed, and the inclosure bound with tape, and sealed in such manner as to prevent its being opened without discovery: And the inspectors present at closing the poll, shall then put their seals, and write their names upon the same inclosure; and one of the inspectors then present, to be appointed for that purpose by a majority of them, shall deliver the same inclosure, so sealed up as aforesaid, to the clerk of the county, without delay, who shall carefully preserve and keep the same unbroken and unopened, until the meeting of the persons appointed to canvass and estimate the ballots therein contained, when he shall deliver the same inclosure, unbroken and unopened, to them.

Sheriffs to put poll lists and ballots into

X. *And be it further enacted by the authority aforesaid,* That each and every sheriff of the respective counties in

a box, and deliver the same into the secretary's office. this state, shall, upon receiving the said inclosures directed to be delivered to them as aforesaid, without opening or inspecting the same, or any or either part of them, put the said inclosures, and every of them, into one box, which shall be well closed and sealed up by him, under his hand and seal, with the name of his county wrote on the box, and be delivered by him, without opening the same, or the inclosures therein contained, into the office of the secretary of this state, before the last Tuesday of May, in every year, where the same shall be safely kept by the secretary of this state, or his deputy, unbroken and unopened, until the meeting of the persons appointed to canvass and estimate the ballots therein contained, when he shall deliver all the said boxes, unbroken and unopened, to them.

Joint committee to be annually appointed by the senate and assembly, to canvass the ballots for governor, lieutenant-governor and senators.
 XI. *And be it further enacted by the authority aforesaid,* That a joint committee shall be appointed yearly and every year, to canvass and estimate the votes for governor, lieutenant-governor and senators, or such of them as are then to be chosen; which committee shall consist of twelve members; That is to say, Six to be appointed by the senate out of their body, and six to be appointed by the assembly out of their body; and such committee shall be annually appointed, by resolutions of each body respectively, and shall meet at the office of the secretary of this state, on the last Tuesday of May; at which meeting the said joint committee, or a major part of them, or the survivors of them, or the major part of such survivors, shall, on the said day, and on so many days next succeeding thereto, as shall be necessary for the purpose, proceed to open the said boxes, one after the other, and the inclosures therein contained respectively, and canvass and estimate the votes therein contained: And if the number of ballots in any inclosure shall exceed the number of electors contained on the poll-lists in the same inclosure, then the said joint committee, or other persons appointed to canvass such ballots, shall proceed to draw out and destroy unopened, so many of the said ballots, as shall amount to the excess, and shall proceed to canvass and estimate the residue: And when and as soon as they shall be able to determine upon such canvass and estimate, who by the greatest number of votes shall have been chosen for a governor, if a governor was to be chosen, and who by the greatest number of votes shall have been chosen for lieutenant-governor, if a lieutenant-governor was to be chosen, and who by the greatest number of votes shall have been chosen for senators, and within fourteen days next after the said last Tuesday in May, the said joint committee, or the major part of them, or the survivors of them, or the major part of such survivors, or other persons appointed to canvass such ballots, shall determine the same; and thereupon, without delay, make and subscribe with their own proper names and hand-writing, a certificate of such determination, in a book to be kept for that purpose in the said secretary's office, there to remain of record, and without delay deliver, or cause to be delivered, a true copy thereof, so subscribed as aforesaid, to each of the persons so elected respectively, and to the person administering the government of the state for the time being, and another copy thereof, subscribed as aforesaid, unto the senate, on the first Monday in July, in every year, or at the next meeting of the legislature thereafter: And when a governor, or lieutenant-governor, shall be to be chosen, the said joint committee, or the major part of them, or the survivors of them, or the major part of such survivors, or other persons appointed to canvass such ballots, shall also cause true copies thereof, subscribed as

aforesaid, to be published in at least three of the public news-papers printed in this state. And when at any election a senator is to be chosen in the room of one dead or removed from office, the said joint committee, or the major part of them, or the survivors of them, or the major part of such survivors, or other persons appointed to canvass such ballots, shall also, upon the said canvass and estimate, determine and certify, in the manner aforesaid, which of the persons chosen for senator, at such election, is elected in the room of the person deceased or removed from office; and in order to enable them to determine the same, it is hereby declared, that when a senator is to be chosen in the room of one dead or removed from office, and any elector does not on his ballot designate who he votes for as senator, in the room of the person deceased or removed from office; then the person last named on the ballot, shall be taken to be voted for in the room of the person deceased or removed from office, if the elector votes for the full number of senators then to be chosen; but if he does not vote for the full number, then it shall be supposed that he did not mean to vote for any person in the room of the person deceased or removed from office; and so in all cases where more than one senator is to be chosen, in the room of others either dead or removed from office, the last person named on the ballot, shall be supposed to be voted for in the room of the person whose time of continuance in office was nearest expiring, at the time of his death or removal from office, and the last but one in the room of the next, and so on, unless otherwise distinguished on the ballot. And further, That immediately upon making such determination as aforesaid, all the poll-books, or lists and ballots, or tickets for governor, lieutenant-governor and senators, and for each and every of them, shall be destroyed by the said joint committee.

In case of non-attendance of committee, secretary to give notice thereof.

And further, That in case no such committee should be appointed, or if such committee should not meet as aforesaid, on the last Tuesday in May, in any year, then it shall be the duty of the secretary of this state for the time being to give notice thereof, on the said last Tuesday in May, or within four days thereafter, to the chancellor and the justices of the supreme court of this state, for the time being; and the chancellor and justices of the supreme court, or the major part of them, shall be, and hereby are, in such case, authorized and required to meet at the office of the secretary of this state, on the second Tuesday in June, in the same year, and on that day, and on so many days next succeeding thereto as shall be necessary for the purpose, canvass and estimate the said votes, and do, execute and perform, all and every thing and things in and about the premises, in the same manner as such joint committee

A majority of canvassers empowered to act.

might or ought to have done. And moreover, when a majority of the said joint committee, or a majority of the survivors of them, or the major part of the said chancellor and justices of the supreme court, shall meet as aforesaid, for the purpose of canvassing and estimating the votes for governor, lieutenant-governor and senators, or for any of them, such majority shall be, and hereby are authorized, empowered and required to proceed to such canvass and estimate; and all questions which shall arise upon such canvass and estimate, or upon any of the proceedings therein, shall be determined according to the opinion of the major part of the persons so met, conformable to this act, and their judgment and determination shall, in all cases, be binding and conclusive.

And further, That the governor and lieutenant-governor so elected, having severally taken their respective oaths of office, shall severally enter upon the execution of their respective offices, on the first day of July then next ensuing ; and that the senators so elected, shall respectively give their attendance, and take their respective seats in senate, on the first Monday of July, in every year, or at the next meeting of the legislature thereafter.

XII. *And be it further enacted by the authority aforesaid,* That the said joint committee, and the chancellor and justices of the supreme court, or such of them as shall attend to make such canvass and estimate as aforesaid, before they proceed to open any of the boxes delivered by the sheriffs as aforesaid, shall severally take and subscribe, before the secretary of this state, or his sworn deputy, or a master in chancery, the following oath, to wit.

I appointed by the senate or assembly (as the case may be) to canvass and estimate the votes for governor, lieutenant-governor and senators, or for lieutenant-governor and senators, or for senators (as the case may be) taken at the last election held within this state : or I chancellor or one of the justices of the supreme court of the state of New-York, (as the case may be) do solemnly and sincerely swear and declare, in the presence of Almighty God, That I will faithfully, honestly and impartially canvass and estimate the votes for governor, lieutenant-governor and senators, or for lieutenant-governor and senators, or for senators (as the case may be) contained in the boxes delivered into the office of the secretary of this state, by the sheriffs of the several counties ; and that I will publish and declare the person who hath the greatest number of votes for governor (if a governor was to be chosen at such election) to be elected to the said office of governor ; and the person who hath the greatest number of votes for lieutenant-governor (if any was to be chosen at such election) to be elected to the said office of lieutenant-governor ; and the persons who have the greatest number of votes for senators, to be elected to the said office of senators respectively ; and if I shall discover any of the other persons appointed a committee with me (or who shall attend with me) for the purpose aforesaid, conducting himself or themselves partially, unduly or corruptly, in the premises, that I will divulge and discover the same, to the end that the person so offending may be brought to justice.

Which oath shall be entered of record, by the secretary or his deputy, in the same book in which the certificate of the determination upon such canvass and estimate, is to be entered as aforesaid.

XIII. *And be it further enacted by the authority aforesaid,* That the mayor, recorder and aldermen of the city of New-York for the time being, or the major part of them, shall be, and hereby are authorized and required to canvass and estimate the votes for members of assembly for the said city and county of New-York, and shall yearly meet together for that purpose, at the city-hall of the city of New-York, on the last Tuesday in May, in every year, and on that day, and on so many days next succeeding thereto, as shall be necessary for the purpose, proceed to open the said inclosures delivered to the clerk of the said city, and canvass and estimate the votes therein contained ; and when and as soon as they shall be able to determine upon such canvass and estimate, who by the greatest number of votes shall have been chosen for members of assembly for the said city and county of New-York, at the last preceding election, and within fourteen days after the said

last Tuesday of May, they shall determine the same, and thereupon, without delay, make and subscribe, with their own proper names and hand-writing, a certificate of such determination, in a book to be kept for that purpose in the office of the clerk of the city of New-York, there to remain of record, and without delay deliver, or cause to be delivered, a true copy thereof, so subscribed as aforesaid, to each of the persons so elected respectively, and to the person administering the government of this state for the time being; and shall also deliver, or cause to be delivered, another copy thereof, so subscribed as aforesaid, unto the assembly, on the first Monday of July, in every year, or at the next meeting of the legislature thereafter; and immediately upon making such determination as aforesaid, all the poll-books, or lists and ballots, or tickets for members of assembly for the same city and county, shall be destroyed by the said mayor, recorder and aldermen, or by some or one of them.

Supervisors to canvass the votes for members of assembly in the counties.

Time and place.

Altered as to Westchester, 12th sess. ch. 55.

XIV. *And be it further enacted by the authority aforesaid,* That the supervisors of each and every of the other counties of this state, for the time being respectively, or the major part of them, shall be, and hereby are authorized and required to canvass and estimate the votes for members of assembly, for their respective counties. And the supervisors of each respective county, for the time being, or the major part of them, shall yearly meet together for that purpose, on the last Tuesday of May, in every year, at the court-house in the same county, if there be any, and if not, or if there be more than one court-house in such county, then at the house or place where the then last court of sessions of the peace for the same county, was held, and on that day, and on so many days next succeeding thereto as shall be necessary for the purpose, proceed to open the said inclosures delivered to the clerk of the said county as aforesaid, and canvass and estimate the said votes therein contained; and when and as soon as they shall be able to determine upon such canvass and estimate, who by the greatest number of votes shall have been chosen for members of assembly for the same county, at the last preceding election, and within fourteen days after the said last Tuesday of May, they shall determine the same, and thereupon, without delay, make and subscribe, with their own proper names and hand-writing, a certificate of such determination, in a book to be kept for that purpose in the office of the clerk of the same county, there to remain of record; and without delay deliver, or cause to be delivered, a true copy thereof, so subscribed as aforesaid, to each of the persons so elected respectively, and to the person administering the government of this state for the time being: And shall also deliver, or cause to be delivered, another copy thereof, so subscribed as aforesaid, unto the assembly, on the first Monday of July, in every year, or at the first meeting of the legislature thereafter. And immediately upon making such determination as aforesaid, all the poll-books or lists, and ballots or tickets for members of assembly for the same county, shall be destroyed by the said supervisors, or by some or one of them.

In case of non-attendance of supervisors, clerk to give notice.

XV. *And be it further enacted by the authority aforesaid,* That in case the supervisors for the time being of any county, or a majority of them, shall not meet as aforesaid on the last Tuesday of May, in any year, then the clerk of such county shall, on the said last Tuesday of May, or within three days thereafter, give notice thereof to the judges and assistant justices of the court,

of common pleas for the time being, in the same county, and the same judges and justices, or the major part of them, shall be, and hereby are in such case, authorised and required to meet together on the second Tuesday in June, in the same year, at the same place where the supervisors ought to have met, and on that day, and on so many days next succeeding thereto as shall be necessary for the purpose, canvass and estimate the votes for members of assembly for the same county, and do, execute and perform all and every thing and things in and about the premises, in the same manner as the supervisors of the same county, or the major part of them, might or ought to have done.

XVI. And be it further enacted by the authority aforesaid, That if the number of ballots for members of assembly in any inclosure, shall exceed the number of electors mentioned on the poll-lists contained in the same inclosure, then the said supervisors, or other persons appointed to canvass such ballots, shall proceed to draw out and destroy unopened, so many of the said ballots as shall amount to the excess, and shall proceed to canvass and estimate the residue: and if two or more ballots or tickets shall be found folded or rolled up together, none of the ballots so folded or rolled up together, shall be estimated.

XVII. And be it further enacted by the authority aforesaid, That when a majority of the said mayor, recorder and aldermen of the city of New-York, or a majority of the supervisors of any county, or the major part of the judges and assistant justices of the court of common pleas of any county, shall meet as aforesaid, for the purpose of canvassing and estimating the votes for members of assembly as aforesaid, such majority shall be, and hereby are authorised, empowered and required to proceed to such canvass and estimate; and all questions which shall arise upon such canvass and estimate, or upon any of the proceedings therein, shall be determined according to the opinion of the major part of the persons so met, and their judgment and determination shall, in all cases, be binding and conclusive.

XVIII. And be it further enacted by the authority aforesaid, That the members of assembly so elected, shall respectively give their attendance, and take their respective seats in assembly, on the first Monday of July, in every year, or at the next meeting of the legislature thereafter.

XIX. And be it further enacted by the authority aforesaid, That the mayor, recorder and aldermen of the city of New-York, or such of them as shall make such canvass and estimate as aforesaid, and the supervisors and judges, and assistant justices of the court of common pleas of each of the other counties of this state, or such of them as shall make such canvass and estimate as aforesaid, shall, before they proceed to open any of the inclosures containing the ballots for members of assembly, severally take and subscribe the following oath, to wit:

mayor or recorder, or one of the aldermen of the city of New-York, or supervisor of in the county of or one of the judges, or one of the assistant justices of the court of common pleas in the county of do solemnly and sincerely declare and swear, in the presence of Almighty God, That I will faithfully, honestly and impartially, canvass and estimate the votes for members of assembly for the city and county of New-York (or for the county of) contained in the inclosures delivered into the office of the clerk of the same city (or county) and

that I will publish and declare the persons who have the greatest number of votes for members of assembly, to be severally elected to the said office respectively; and that if I shall discover any of the other persons who shall attend with me for the purpose aforesaid, conducting or demeaning himself or themselves partially, unduly or corruptly in the premises, that I will divulge or discover the same, to the end that the person so offending may be brought to justice.

Which oath shall be taken by the said mayor, recorder and aldermen of the city of New-York, before the clerk of the same city, or either of the justices of the supreme court, or a master in chancery, and shall be entered of record by the clerk of the same city, in the same book where the certificate of their determination is to be entered as aforesaid; and the said oath shall be taken by the supervisors or judges, and assistant justices of the court of common pleas, in each of the other counties respectively, before the clerk or any justice of the peace of the same county, and shall be entered of record by the clerk of the same county, in the same book where the certificate of their determination is to be entered as aforesaid.

XX. And be it further enacted by the authority aforesaid.
 Penalty on convales for mal conduct. That if any or either of the said joint committee, or the chancellor, or any or either of the justices of the supreme court, or the mayor, or recorder, or any or either of the aldermen of the city of New-York, or any or either of the supervisors, or judges, or assistant justices of the court of common pleas in any county, or any inspector, shall be guilty of any partial, or corrupt, or undue conduct or behaviour in the business by this act committed to them, and be thereof convicted, he and they and every of them so convicted, shall suffer the same pains and penalties, as in cases of wilful and corrupt perjury; and shall, from and after such conviction be utterly disabled and disqualified to hold or enjoy any place or office in this state; any pardon that may be issued by the person administering the government of this state to the contrary hereof in any wise notwithstanding.

XXI. And be it further enacted by the authority aforesaid.
 Penalty for neglect of duty. That if any or either of the said joint committee, or the chancellor, or any or either of the justices of the supreme court or the mayor or recorder, or any or either of the aldermen of the city of New-York, or any or either of the supervisors, or judges, or assistant justices of the court of common pleas in any county, or any inspector, the clerk, or clerk, shall wilfully neglect to perform the duties respectively required of them by this act, or shall be guilty of any corrupt misbehaviour, in any matter or thing in or relating to the business committed to them respectively by this act, and be thereof convicted, he, they and every of them so offending and convicted, shall forfeit and pay, for every such offence, the sum of two hundred pounds, to be recovered by action of debt, bill, plaint or information, in any court of record; the one moiety thereof to the use of any person who shall prosecute for the same, and the other moiety thereof to the use of the people of this state. And if the prosecutor in any such suit shall prevail, he shall likewise have judgment for and recover his costs of suit against the person convicted. But if the person so proceeded against, shall be acquitted, he shall recover double costs against the prosecutor; and the process shall issue to bring in the party accused, until bond be filed in the office of the clerk of the court out of which such process shall issue, in the penalty of two hundred pounds, with two sufficient freeholders as sureties.

such as the court shall approve, to secure the defendant double costs, to become due on a discontinuance, withdrawing of the suit, or an acquittal, or neglect to bring the same to trial within five terms after the appearance of the defendant to answer the same.

XXII. *And be it further enacted by the authority aforesaid,* That if any person shall be guilty of any disorderly conduct at any such election for governor, lieutenant-governor, senators and members of assembly, or any of them, or of using indirect, sinister or corrupt means to influence any elector or electors, in giving in his or their ballots, the major part of the inspectors at such election are hereby authorised, empowered and required to commit the offender to the gaol of the county, there to remain committed, for a space not exceeding thirty days; and all sheriffs, under sheriffs, constables and gaolers, are hereby strictly charged, commanded and required to aid and obey the inspectors herein.

Persons guilty of XXIII. *And be it further enacted by the authority aforesaid,* That whoever shall, by bribery, menace, or other bribery or corruption *said,* corrupt means or device whatsoever, either directly or indirectly, attempt to influence any free elector of this state, in giving his vote or ballot, or deter him from giving the same, at any election within this state, and shall thereof be convicted, such person so offending and convicted, shall forfeit and pay, for every such offence, the sum of five hundred pounds, to be sued for and recovered by any person, and in the manner, and under the restrictions above prescribed, in actions to be brought for neglect of duty, or corrupt misbehavior; one moiety of which penalty shall be recovered to the use of the person suing and prosecuting for the same, and the other moiety thereof to the use of the people of this state: and on such conviction, the person convicted shall thenceforth and forever thereafter, stand and be utterly disabled, disqualified and incapacitated to hold, exercise or enjoy any office or place of trust or profit whatsoever, within this state.

XXIV. *And be it further enacted by the authority aforesaid,* That no person under the age of twenty-one years, nor any person not a citizen of this state, or of one of the United States, shall have a right to vote at any election in this state.

XXV. *And be it further enacted by the authority aforesaid,* That every mortgagor, while he continues in the occupation of the premises mortgaged, and every mortgagee of a real estate, to him and his heirs, after he obtains possession of the mortgaged premises, and every person possessed of a freehold in right of his wife, shall be deemed and esteemed a freeholder within the meaning of this act.

XXVI. *And be it further enacted by the authority aforesaid,* That all and every person and persons inhabitant and inhabitants of this state, who at any time after the ninth day of July, in the year of our Lord one thousand seven hundred and seventy-six, and during the late war between the king of Great-Britain and the United States of America, did voluntarily take up arms with the British troops, or with the Indians then at war with this state, or any of the United States; and every person or persons who did, within the time aforesaid, voluntarily take any commission or appointment in the army or navy of the king of Great-Britain, and every person and persons who shall have acted as captain, lieutenant or master of any privateer or privateers, or vessel of war to cruise against or commit hostilities upon the vessels, property

or persons of any of the citizens of this state or any other of the United States, shall be, and hereby is and are declared to be, utterly disabled, disqualified and incapacitated to hold, exercise or enjoy a seat in either house of the legislature, or any office or place of trust, honor or profit whatsoever, within this state. Provided always, That nothing in this act contained, shall be construed to disqualify persons who have not been commissioned or employed otherwise than as officers of the militia, or in doing militia duty during the time aforesaid. And provided further, That nothing in this act contained, shall be construed to disqualify any person who has been naturalized since the said ninth day of July, one thousand seven hundred and seventy-six.

† 1st sess. ch. 16.
‡ 4th sess. ch. 36.

XXVII. *And be it further enacted by the authority aforesaid,* That the act, entitled, † An act to regulate elections within this state; and the second section of the act entitled, ‡ An act for the better securing the independence of this state, and to that end requiring all public officers and electors within this state, to take the test oath therein contained; and the second section of the act entitled, § An act to preserve the freedom and independence of this state, and for other purposes therein mentioned; and all laws heretofore made in this state, while the same was the colony of New-York, relating to the election of representatives to sit in general assembly, shall be, and hereby are repealed.

C H A P. XVI.

An ACT for the more orderly holding of Town-Meetings.

Passed 4th February, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That for the more orderly holding of town-meetings, it shall be, and is hereby made the duty of the justices of the peace for the time being, to attend at every town, precinct and district meeting; hereafter to be held in and for the town, precinct or district in which they respectively reside; and that the said justices of the peace, or such of them as shall attend at such meeting, shall preside at and superintend the same, and take care that the business thereof be orderly and regularly conducted; and shall, in case of dispute, determine who have and who have not a right to vote or be elected at such meeting according to law. And if no justice of the peace shall reside in the town, precinct or district, at the time of holding such meeting, then the clerk of the town, precinct or district, who was elected at the last preceding meeting, shall preside at such meeting, and have and exercise all the powers and authorities hereby vested in the justices.

II. *And be it further enacted by the authority aforesaid,* That every male person, being a citizen of this state, who shall be above the age of twenty-one years, and shall have resided in any town, precinct or district, six months next preceding such town, precinct or district meeting, and paid taxes within the same, or shall be possessed of a freehold, or shall have rented a tenement of the yearly value of forty shillings, for the term of one year, within the same, shall have a right to vote at such meeting, and no other person.

III. *And be it further enacted by the authority aforesaid,* That the 1st Tuesday in April, in every year hereafter, shall be the anniversary day of holding town-meetings in the

Time, place, and continuance of town meetings.

several towns, precincts and districts, in the several counties of this state; and that no such town-meetings shall be held longer than two days, and shall only be held open between sun-rise and sun-set; any law, usage or custom to the contrary notwithstanding.

C H A P. XVIII.

An ACT concerning Coroners.

Passed 14th February, 1787.

I. BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That in every county of this state, sufficient men shall be appointed to be coroners, of the most wise and discreet men of the same county, who know, will, and may best attend upon such offices. And further, That every coroner upon notice, or being certified by the people of the county, shall go to the places where any be slain, or suddenly dead, or wounded, or where houses are broken open, or where treasure is said to be found, and shall forthwith command twenty-four good and lawful men of the same county, to appear before him at such place in the same county as he may find most proper and convenient, and shall appoint; and when they, or any twelve or more of them, shall appear, the coroner shall, upon their oath, and upon view of the body, when any is slain, or suddenly dead, inquire by what means and in what manner the person so dead came to his or her death, and whether the person so dead, be known or a stranger, and where he or she lay the the night before; and if such person was slain, where and when the same person was slain, and whether it was in any house, field, bed, tavern, or company, and who were there, if any, and who were guilty, and in what manner, either of the act, or as accessary, and who were present, either men or women, of what age soever they be, if they can speak, or have discretion; and such as shall be found guilty by inquisition, in any of the manners aforesaid, shall be taken and delivered to the sheriff, and shall be committed to the gaol; and if any person shall be found dead in the fields or in the woods, it shall be inquired, whether he or she was slain there or not; and if the body so found, were brought and laid there, they shall do so much as they can to follow the steps of those who brought the body thither: And if any person be found guilty of murder, the coroner shall immediately go unto his house, and shall inquire how much land he hath, and what it is worth yearly, and what corn he hath upon the ground, and what goods and chattels he hath, and shall value the same lands, goods and chattels, as if they should be immediately sold; and thereupon the coroner shall seize and be answerable for the same. And immediately after such inquiry shall be made, the bodies of such persons being slain or suddenly dead, shall be buried. And in like manner it is to be inquired of persons that be drowned or suddenly dead, when their bodies be found, whether they were so drowned, or slain, or strangled, or killed by any other, and what hurt found upon their bodies; whereupon the coroner and jury shall proceed in manner aforesaid. And in like manner it is to be inquired of them that die in prison, or be killed by misfortune. And the coroner ought also to inquire of treasure that is found; who were the finders, and likewise who is suspected thereof; and such as be so found may be attached by the coroner, and bound, with at least two sureties, to appear before the justices of the next gaol delivery in the same county, to answer the premises. And

moreover, If any be appealed of rape, they shall be taken and delivered to the sheriff, and be committed to the gaol, if the appeal be fresh, and there be apparent sign of truth, by effusion of blood, or an open cry made ; but if there was no cry, nor any manifest sign or token of the truth of the appeal, the defendant shall be bound, with two or more sufficient sureties, to appear before the justices of the next gaol delivery in the same county, to answer the premises. And upon appeals of wounds, and such like, especially if the wounds be mortal, the parties appealed shall be taken and delivered to the sheriff, and shall be committed to the gaol, and kept until it be perfectly known whether the person hurt shall recover or not ; and if the person hurt, die, the defendant shall be kept ; but if the person recover, the defendant may be let to mainprize, by one of the justices of the supreme court, but by none other ; And if the wound be not mortal, or if the appeal be for a maim, the defendant shall be bound with two or more sureties, to appear before the justices of the next gaol delivery in the same county, to answer the premises. And also, all wounds ought to be viewed, the length, breadth, and depth, and how many wounds there be, and with what weapons they were made, and in what part of the body the wound or hurt is, and who are guilty, and if there be many wounds, who gave each particular wound. And if any be appealed of any act done as principal, they that be appealed as accessary, shall also be taken, and safely kept in gaol, until the principals be attainted or delivered. And if any be suspected of the death of any person, or of doing any hurt to any person, so as to endanger life, such person so suspected, shall be taken and imprisoned as aforesaid ; all which things must be enrolled in the roll of the coroners. And moreover, Hue and cry shall be laid for all murders and burglaries, and for men slain, or in peril to be slain ; and all persons shall follow the hue and cry, and pursue the offenders as near as can be ; and he that doth not, and is convicted thereupon, by the record of the coroner, shall be attached to be before the justices of the next gaol delivery in the same county, to answer the premises. And further, That all coroners shall deliver their inquisitions and rolls, before the justices of the next gaol delivery, in their respective counties ; and the same justices shall proceed thereupon against the offenders, if they be in gaol, and if not, the same justices shall deliver the same inquisitions and roll into the supreme court, there to be proceeded upon according to law.

II. *And be it further enacted by the authority aforesaid,* That every coroner, upon any inquisition before him found, whereby any person or persons shall be indicted of murder or manslaughter, or as accessary or accessaries to the same, before the murder or manslaughter committed, shall put in writing the effect of the evidence given to the jury before him, being material ; and every such coroner is hereby authorized and required to bind all such by recognizance, as do declare any thing material, to prove the said murder or manslaughter, or to prove any person or persons to be accessary or accessaries to the same, to appear at the next gaol delivery to be holden within the county or city where the trial thereof shall be, then and there to give evidence against the party so indicted, at the time of his or her trial ; and shall certify, as well the same evidence, as such recognizance and recognizances, in writing, as he shall take, together with the inquisition, or indictment before him taken and found, to the same court, at or before the time of the trial of the party so indicted. And in case any coroner shall be remiss, and do not take inquisition as aforesaid, or do not certify as is before ordained, or shall offend in any thing contrary to the true intent and mean-

ing of this act, the justices of gaol delivery of the county or city where such offence shall be committed, upon due proof thereof by examination before them, shall, for every such offence, set such fine upon every of the same coroners, as the same justices of gaol delivery shall think meet, and estreat the same as other fines and amerciaments assessed before justices of gaol delivery, ought to be estreated.

III. *And be it further enacted by the authority aforesaid, That any return made and signed by any one of the coroners for the time being, in any of the counties of this state, to any future process except process for summoning juries, which shall issue from and out of any court of record in this state, directed to the coroners of the said counties respectively, shall, and is hereby declared to be as good and valid in law, to all intents, constructions and purposes, as if such return was made and signed by all the coroners of the said counties respectively; but the act or return of any one or more of the coroners, shall in no degree prejudice the rest.*

CH A P. XIX.

An ACT concerning Executors and Administrators.

Passed 14th February, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That from henceforth, executors shall have a writ of account, and the same action and process in the same writ, as the testator might have had, if he had lived.

II. *And be it further enacted by the authority aforesaid, That executors shall and may have an action for a trespass done to their testator, as of the goods and chattels of the same testator, carried away in his life-time, against the trespassers, and recover their damages in like manner as the person whose executors they be, should have had, if he or she were in life. And where any testator or intestate shall, in his life-time, have taken or carried away, or converted to his or her use, the goods or chattels of any person or persons, such person or persons, his or her executors or administrators, shall have and maintain the same action against the executors or administrators of such testator or intestate, as he, she or they might have had or maintained against such testator or intestate, and shall have the like remedy and process for the damages recovered in such action, as are now had and allowed in other actions against executors or administrators.*

III. *And be it further enacted by the authority aforesaid, That in actions against divers executors, all the same executors shall be considered as one person, representing the person of the testator; and although the sheriff answer at the summons, that some of them have nothing, whereby he, she or they may be summoned, yet there shall be an attachment awarded upon him, her or them; and if the sheriff answer, that he, she or they have nothing whereby he, she or they may be attached, the great distress shall be awarded, and he, she or they, that do first appear in the court, shall answer to the plaintiff; and in case judgment shall pass for the plaintiff, he or she shall have his or her judgment and execution against him, her or them, that have appeared, according to the law heretofore used, and against all others named in the writ, of the goods of the testator, as well as if they had all appeared. But it is to be understood, That if any, in such case, will sue accord-*

ing to the law that hath been anciently used, he or she may freely do it notwithstanding this statute.

IV. *And be it further enacted by the authority aforesaid,* That executors of executors shall have actions of debt, account, and of goods carried away of the first testator, and execution of judgment obtained by, or recognizances made to the first testator, in any court of record, in the same manner as the first testator should have had if he were in life, as well as actions of the time past, as of the time to come: And that the same executors of executors shall answer to others, of as much as they have recovered of the goods of the first testator, as the first executors should do if they were in full life.

V. *And be it further enacted by the authority aforesaid,* That where any person dieth intestate, the widow, or next of kin, or any of them, of the deceased person, if they, or either of them, will accept the same; and if not, some other proper person or persons shall be deputed to administer the goods of the intestate; and that such administrators shall have action to demand and recover as executors, the debts due to the said person intestate, and shall answer to others to whom the intestate was holden and bound, in the same manner as executors shall answer, and shall be accountable as executors be, in case of testament, as well of the time past as the time to come.

VI. *And be it further enacted by the authority aforesaid,* That a writ of idempotence nominis, shall and may be granted and made good and maintainable for the executors of every testator, and the administrators of every person dying intestate, to the same effect, as the same action of idempotence nominis would have been maintainable for the testator or intestate, if such testator or intestate were in life, and were or might have been molested or grieved, because or by colour of any outlawry of any person having such and the like names, as the same testator or intestate had.

VII. And for as much as it is sometimes practised to the defrauding of creditors, that such persons as are to have the administration of the goods of others dying intestate, committed unto them, if they require it, will not accept the same, but suffer or procure the administration to be granted to some other of mean estate, from whom themselves, or others by their means, do take deeds of gifts, and authorities by letters of attorney, whereby they obtain the estate of the intestate into their hands, and yet stand not subject to pay any debts owing by the same intestate, and so the creditors, for want of knowledge of the place of habitation of the administrator, cannot arrest or sue him or her; and if they happen to find him or her out, yet for want of ability in him or her to satisfy, of his or her own goods, the value of that he or she hath conveyed away or wasted, of the intestate's goods, or released of his or her debts, the creditors can not have or recover their just debts: Therefore, *Be it further enacted by the authority aforesaid,* That every person and persons who shall obtain, receive and have any goods or debts of any person dying intestate, or a release or other discharge of any debt or duty that belonged to the intestate upon any fraud as is aforesaid, or without such valuable consideration as shall amount to the value of the same goods or debts, or near thereabouts (except it be in, or towards satisfaction of some just and principal debt, of the value of the same goods or debts to him or her owing by the intestate, at the time of his or her decease) shall be charged and chargeable as executor of his or her own wrong, and so far only as all such goods and debts coming to his or her hands, or whereof he or she is released or discharged by such administrator, will satisfy;

deducting nevertheless, to and for himself, allowance of all just due and principal debts upon good consideration, without fraud, owing to him or her by the intestate, at the time of his or her decease, and of all other payments made by him or her, which lawful executors or administrators may and ought to have and pay by the laws of this state.

VIII. *And be it further enacted by the authority aforesaid,* That where any judgment hath been, or shall be had by or in the name of any executor or administrator; and every such case, an administrator de bonis non, may sue forth a scire facias, and have and take execution upon such judgment.

IX. *And be it further enacted by the authority aforesaid,* That all and every the executors and administrators of any person or persons, who, as executor or executors, either of right, or in his, her or their own wrong, or as administrator or administrators, hath or have wasted or converted, or hereafter shall waste or convert any goods, chattels, estate or assets of any person deceased, to his, her or their own use, shall be liable and chargeable, in the same manner as his, her or their testator or intestate would have been, if living.

X. *And be it further enacted by the authority aforesaid,* That actions of account shall and may be brought and maintained against the executors or administrators of every guardian, bailiff, and receiver.

XI. *And be it further enacted by the authority aforesaid,* That the executor and executors named by the testator, or person deceased, or such other person or persons to whom administration hath been or shall be committed, where any person hath died, or shall die intestate, or by way of intestate, calling or taking to him, her or them, such person or persons, two at the least, to whom the said person so dying was indebted, or made any legacy: and upon their refusal or absence, two other honest persons, being next of kin to the person so dying; and in their default or absence, two other honest persons; and in their presence, and by their discretion, shall make or cause to be made, a true and perfect inventory of all the goods, chattels, wares and merchandize, as well moveable as not moveable, whatsoever, that were of the person so deceased, and the same shall cause to be indented, whereof the one part shall be, by the said executor or executors, administrator or administrators, presented and delivered to the judge of the court of probates, or to the surrogate in whose office the testament of such person so dying was proved, or administration committed, upon the oath or oaths of such executor or executors, administrator or administrators, to be taken before the said judge or surrogate, that the same inventory is just and true; and the other part of the same inventory shall remain with the said executor or executors, administrator or administrators.

CHAP. XX.

An ACT for the better apprehending of Felons.

Passed 14th February, 1787.

BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That when any murder, robbery, burglary, burning of houses, theft, or other felony, shall be committed, cries thereof shall be solemnly made immediately in all the towns, markets and places of public resort, near where the same

felony shall be committed, so that no man, by ignorance, may excuse himself; and that fresh pursuit after such robbers and felons, shall be forthwith made from town to town, and from county to county, by horsemen and footmen, to apprehend and arrest the same robbers and felons. And further, That all men generally be ready, and armed and accoutred, at the commandment and summons of sheriffs, coroners, bailiffs, constables and marshals; and at the cry of the country, to pursue and arrest felons whenever there shall be occasion, as well within franchise as without; and they who will not do so, and be thereof convicted, either in the supreme court, or before justices authorised or assigned to hear and determine, or before the justices of the peace, at their general session, in and for the city or county where such neglect shall happen, shall be punished by fine, according to the discretion of the justices of the same court. And if any sheriff, coroner, bailiff, constable, or marshal, within any franchise, or without, for reward, or for prayer, or for fear, or for any manner of affinity, or for any other cause shall conceal, or consent or procure to be concealed, any felony whatsoever, or will not attach or arrest such felons when he may, or otherwise will not do his office, for favour to such misdoers, or for any other cause, and be thereof convicted, in any such court as aforesaid; he and they and every of them so offending, shall be punished by fine and imprisonment, according to the discretion of the justices of the same court.

C H A P. XXI.

An ACT for the Punishment of the Vice of Buggery:

Passed 14th February, 1787.

BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That the detestable and abominable vice of buggery, committed with mankind or beast, shall be from henceforth adjudged felony; and such order and form of process therein, shall be used against the offenders, as in cases of felony at the common law; and that every person being thereof convicted, by verdict, confession or outlawry, shall be hanged by the neck, until he or she shall be dead.

C H A P. XXII.

An ACT concerning Murder.

Passed 14th February, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That all wilfull killing by poisoning of any person or persons, done, perpetrated or committed, or that at any time hereafter shall be done, perpetrated or committed, shall be adjudged, taken and deemed wilful murder of malice prepense; and the offenders therein, their aiders, abettors, procurers and counsellors, shall suffer death, and forfeit, in every behalf, as in other cases of wilful murder of malice prepense.

II. *And be it further enacted by the authority aforesaid, That if any person or persons shall stab or thrust any person or persons, that hath not then any weapon drawn, or that hath not then first stricken the party who shall be stabbed or thrust, so as the person or persons so stabbed or thrust, shall thereof die within the space of six months then next following, although it cannot be*

proved that the same was done of malice aforethought, every such unlawful killing shall be adjudged, taken and deemed, wilful murder: And the offenders therein, their aiders, abettors, procurers and counsellors, shall suffer death, and forfeit, in every behalf, as in other cases of wilful murder of malice pre-

Not to extend to any person killing another in his own defence or by misfortune. But this shall not extend to any person or persons who shall kill any person or persons in his, her or their own defence, or by misfortune, or in any other manner than as afore said; nor to any person or persons who, in keeping and preserving the peace, shall chance to kill any person or persons, so as such killing be not done wittingly, willingly, and of purpose, under pretext and colour of keeping the peace; nor to any person or persons, who, in chastising or correcting his, her or their child, or servant, shall, contrary to his, her or their intent and purpose, chance to kill such child or servant.

III. *And be it further enacted by the authority afore said,* That when a servant killeth his master, or a wife her husband, of malice prepense, such offence shall be deemed and adjudged to be, and shall be punished as murder.

Persons killing others attempting to rob or murder, to be acquitted. IV. *And be it further enacted by the authority afore said,* That if any evil disposed person or persons shall attempt feloniously to rob or murder any person or persons, in or nigh any highway, or in his or their mansion-house or dwelling-place, or shall feloniously attempt to break any dwelling-house in the night, and shall happen, in his or their being in such their felonious attempt, to be slain by him, her or them, whom the said evil-doers shall so attempt to rob or murder, or by any person or persons being in the dwelling-house, which the same evil-doers shall attempt burglariously to break by night; then and in every such case, if the person or persons so happening to kill any such person or persons, so attempting to commit any such murder, robbery or burglary, shall be indicted or appealed of or for the death of such evil-disposed person or persons, so attempting to commit murder, robbery or burglary, as afore said, if it be found by verdict, that the party so indicted or appealed, killed such evil-disposed person or persons in such felonious attempt, the party so indicted or appealed, shall not forfeit or lose any thing for the death of such evil-disposed person, in manner afore said slain, but shall be thereof, and for the same, fully acquitted and discharged, in like manner as the same person or persons should be, if he, she or they were lawfully acquitted of the death of the said evil-disposed person or persons.

Persons killing others in their own defence, or by misfortune, to be acquitted. V. *And be it further enacted by the authority afore said,* That upon all indictments and appeals of or for the death of any person or persons, if it be found by verdict, that the party indicted or appealed, killed the person or persons for whose death he, she or they is, are or shall be indicted or appealed, in his, her or their own defence, or by misfortune, then, and in every such case the party so found by verdict to have killed the person or persons for whose death he, she or they is, are or shall be indicted, or appealed, in his, her or their own defence, or by misfortune as afore said, shall not forfeit or lose any thing for the death of the same person or persons, so killed, but shall be thereof, and for the same, fully acquitted and discharged.

Persons killing others, in apprehending traitors or felons, or in defence of husband &c. or in suppressing VI. *And be it further enacted by the authority afore said,* That upon all indictments and appeals, of or for the death of any person or persons, if it be found by verdict, that the party indicted or appealed happened to kill the person or

riots, &c. to be acquitted. persons for whose death he, she or they is, are or shall be indicted or appealed, in attempting or endeavoring by any lawful ways or means, to apprehend, take or arrest the same person or persons, for any treason or felony done and committed, or hereafter to be done and committed, or in the lawful defence of his, her or their husband, wife, parent, child, master, mistress or servant, or in suppressing any riot, or in keeping and preserving the peace, or in lawfully chastising or correcting his, her or their child or servant; then, and in every such case, the party so found by verdict to have killed the person or persons for whose death he, she or they is, are or shall be indicted, or appealed, shall not forfeit or lose any thing for the death of the same person or persons so killed, but shall thereof, and for the same, be fully acquitted and discharged.

C H A P. XXIII.

An ACT for preventing and punishing Rapes, and the forcible taking of Women.

Passed, 14th February, 1787.

I. *BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That if any person shall unlawfully and carnally know and abuse any woman child, under the age of ten years, every such unlawful and carnal knowledge, shall be deemed and adjudged to be a rape and felony; and every offender, being thereof duly convicted or attainted, shall suffer death for the same.

II. And be it further enacted by the authority aforesaid, That if any person shall, by force, ravish a married woman, or maid, or any other woman, it shall be deemed and adjudged felony; and every offender, being thereof duly convicted or attainted, shall suffer death for the same. And in all cases of rape, the offenders may be prosecuted and punished at the suit of the people of this state, as well as by appeal at the suit of the party.

III. And whereas women, as well maidens as widows and wives, having substance, some in goods moveable, and some in lands and tenements, and some being heirs apparent unto their ancestors, for the lucre of such substance, be sometimes taken by misdoers, contrary to their will, and afterwards married to such misdoers, or to others by their assent, or defiled; For prevention whereof, Be it further enacted by the authority aforesaid, That if any person or persons shall take any woman so against her will unlawfully; That is to say, maid, widow or wife, such taking, and the procuring and abetting to the same, shall be felony; and every offender, being thereof duly convicted or attainted, shall suffer death for the same. And that such misdoers, takers, procurators and abettors to the same, in form aforesaid, shall be reputed and judged as principal felons; but this clause of this act shall not extend to any person taking any woman, only claiming her as his ward, or bond-woman.

C H A P. XXIV.

An ACT to prevent Encroachments of the Court of Admiralty.

Passed 14th February, 1787.

B*E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That the court of admiralty of this state, shall not meddle or hold plea of any

thing done within this state, but only of things done upon the sea, as it hath been formerly used : And further, That all manner of contracts, pleas and quarrels, and of all other things done, arising within the body of any county of this state, as well by land as by water, and also of wreck of the sea, the court of admiralty shall have no manner or cognizance, power nor jurisdiction ; but all such manner of contracts, pleas and quarrels, and all other things arising within the body of any county of this state, as well by land as by water as aforesaid, and also wreck of the sea, shall be tried, determined, discussed and remedied by the laws of the land, and not before, nor in or by the court of admiralty. Nevertheless, Of the death of any person, and of maihem done in ships or vessels being and hovering in the main stream of great rivers, out of the body of any county, or nigh to the sea, and in none other places of the same rivers, the court of admiralty shall have cognizance. And moreover, That as touching a pain to be set on the judge of the court of admiralty, this statute and the common law shall be holden against him ; and that any person who shall be aggrieved, against the form of this statute, shall have his action by writ grounded upon the case, against him that doth so pursue in the court of admiralty, and recover his double damages against the pursuant ; and the same pursuant shall incur the pain of ten pounds, to the people of this state, for the pursuit so made, if he be convicted. Provided always, That nothing in this act shall extend to any libel, information or suit in the court of admiralty, for or concerning the forfeiture of any goods, wares or merchandize, seized or to be seized by virtue of an act, entitled, An act imposing duties on certain goods, wares and merchandize, imported into this state.

C H A P. XXVI.

An ACT for preventing of Vexations and Oppressions by Arrests.

Passed 16th February, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That all and every sheriff, under sheriff, coroner, gaoler and other officer, shall let out of prison all manner of persons by them, or any of them arrested or to be arrested, or being in their custody, by force of any writ, bill, or warrant, in any personal action, or by reason of any indictment for trespass, upon reasonable sureties, of sufficient persons having sufficient within the counties where such persons be so let to bail or mainprise, to keep their days in such place as the said writs, bills or warrants shall require (except such person or persons as be, or shall be in their ward, by condemnation, execution, capias utlagatum, surety of the peace, and all such persons as be, or shall be committed to ward by special commandment of any court or justices) and that no sheriff, or any of the officers or ministers aforesaid, shall take, or cause to be taken, or make any obligation, for any cause aforesaid, or by colour of their office, of any person, or by any person who shall be in their ward, by course of law, but only to themselves, and by the name of their office, and upon condition written, that the said prisoners shall appear at the day contained in the said writ, bill, or warrant, and in such places as the said writs, bills or warrants shall require ; and if any of the said sheriffs, officers or ministers aforesaid, take any obligation, in other form, by colour of their offices, it shall be void. And further, That if any sheriff or other officer, or minister aforesaid, return upon any person, that he hath taken the body, or that such

person hath surrendered himself, such sheriff or other officer, or minister aforesaid, shall be chargeable to have the body of such person at the days of the returns of the said writs, bills or warrants, in such form as they were before the making of this act.

II. *And be it further enacted by the authority aforesaid,*

What security is to be taken for appearance, where the cause of action is not expressed in the process.

That no person or persons who shall happen to be arrested by any sheriff, under sheriff, coroner, minister or other officer, or any other person or persons whomsoever, having or pretending to have authority or warrant in that behalf, by force or colour of any writ, bill or process issued or to be issued out of the supreme court (except writs of *capias utlagatum*, attachments upon rescous, attachments upon contempt, and attachments of privilege, at the suit of any privileged person) in which said writ, bill or process, the certainty and true cause of action is not expressed particularly, and for which the defendant or defendants in such writ, bill or process named, is and are, or shall be bailable, by such sheriff, under-sheriff, coroner, minister, and other officer as aforesaid, shall be forced or compelled to give security, or to enter into bond with sureties, for the appearance of such person or persons so arrested, at the day and place in the said writ, bill or process specified or contained, in any penalty or sum, exceeding the sum of forty pounds, lawful money of this state, to be conditioned for such appearance. And that all sheriffs, and other officers and ministers aforesaid, shall let to bail, and deliver out of prison, and from their and every of their custodies respectively, all and every person and persons whomsoever, by them or any of them arrested, upon any such writ, bill or process, wherein the certainty and true cause of action is not particularly expressed (except as before excepted) upon security, in the sum of forty pounds, and no more, given for the appearance of such person or persons so arrested, unto the said sheriff, or other officer aforesaid, in manner and form aforesaid, or upon such person or persons so arrested, indorsing his, her or their appearance upon such writ, bill or process. And further, That where such appearance shall be endorsed upon any such writ, bill or process, the clerk of the said supreme court shall, at the return of the same writ, bill or process, enter the appearance of such person or persons so indorsed; and where such person or persons so arrested shall give bond, in the sum of forty pounds, for his, her or their appearance as aforesaid, and shall, either in person, or by any attorney of the same court, cause his, her or their appearance unto the same writ, bill or process, to be entered with the clerk of the same court, in the term wherein the same writ, bill or process shall be returnable, such bond or bonds, so given for appearance, shall be, and hereby are declared to be thereby satisfied and discharged; and after such appearance so entered, no amerciaments shall be set or extorted upon or against any sheriff, or other officer aforesaid, or any other person or persons, concerning the want of such appearance. And moreover, Unless the plaintiff or plaintiffs in any such writ, bill or process named, shall put into the same court, his, her or their bill or declaration, against the person or persons so arrested, in some personal action, or ejectment of lands or tenements, before the end of the term next following after appearance, that then a non-suit, for want of a declaration, may be entered against the said plaintiff or plaintiffs; and that every defendant in every such writ, bill or process named, shall or may have judgment to recover costs against such plaintiff or plaintiffs, to be assessed, taxed and levied in like manner as

costs awarded to defendants, in cases of verdicts or judgments for them, are to be assessed, taxed and levied.

Manner of proceed. III. *And be it further enacted by the authority aforesaid,* That where on any process issued, or to be issued out of any mayor's court, or court of common pleas, within this state, special bail is not required, and the defendant or defendants shall indorse his, her or their appearance upon the same process, the clerk of the same court shall, at the return of the same process, enter the appearance of such defendant or defendants so indorsed, which shall be a sufficient appearance of such defendant or defendants, to enable the plaintiff or plaintiffs to proceed to judgment and execution, in his, her or their suit or action.

Prisoner not to be carried to any tavern or ale-house, without his consent. IV. *And be it further enacted by the authority aforesaid,* That if any sheriff, under sheriff, coroner, or other officer or minister whatsoever, shall, at any time or times hereafter, have in his or their custody, any person or persons, by virtue of, or colour of any writ, process, or other warrant whatsoever, it shall not be lawful for such officer or officers to convey or carry, or cause to be conveyed or carried, the said person or persons, to any tavern, ale-house, or other public victualling or drinking-house, without the free and voluntary consent of the said person or persons, so as to charge such prisoner with any sum of money, for any wine, beer, ale, cider, punch, victuals, tobacco, or any other thing whatsoever, but what the said person or persons shall call for, of his, her or their own accord; and such officer or officers shall not demand, take or receive, or cause to be demanded, taken or received, directly or indirectly, any other or greater sum or sums than what by law ought to be taken or demanded for such arrest, taking, or waiting until such person or persons shall have procured an appearance, found bail, agreed with his, her or their adversaries, or be sent to the proper gaol belonging to the county, city, town or place where such arrest or taking shall be; nor take or exact any other reward or gratuity for so keeping the said person or persons out of the gaol or prison, than what he, she or they shall or will, of his, her or their own accord, voluntarily and freely give, nor take nor receive any other or greater sum or sums for each night's lodging, or other expences, than what is reasonable and fitting in such cases, or shall be so adjudged by the next justice of the peace, or at the general sessions; and shall not cause or procure the said person or persons to pay for any other wine, beer, ale, cider, punch, victuals, tobacco, or other things, than what the said person or persons shall voluntarily, particularly, and freely call for. And further,

Sheriff's and gaolers to permit prisoners to send for necessaries. That every sheriff, under-sheriff, gaoler, keeper of prison or gaol, and every person and persons whomsoever, to whose custody any person or persons shall be delivered or committed, by virtue of any writ or process, or on any pretence whatsoever, shall permit and suffer the said person or persons, at his, her and their will and pleasure, to send for and have any beer, ale, victuals, and other necessary food, where and from whom they please; and also, to have and use such bedding, linen, and other things, as the said person or persons shall think fit, without any purloining, detaining, or paying for the same, or any part thereof, and shall not demand, take or receive of the said person or persons, any other or greater fee or fees whatsoever, for his, her or their commitment, release or discharge, than what is or shall be allowable by law, nor any thing whatsoever for his, her or their chamber rent. And moreover, That it shall

Debtors and felons not to be kept together in one room. not be lawful for any sheriff, gaoler or keeper of any gaol or prison, to put, keep or lodge prisoners for debt, and felons, together in one room or chamber, but that they shall be put, kept and lodged separate and apart one from another, in distinct rooms.

V. *And be it further enacted by the authority aforesaid,* That all and every sheriff, under sheriff, coroner, gaoler, and other officer or minister aforesaid, who shall offend against any thing in this act herein before contained, or the true intent and meaning thereof, or any part thereof, shall forfeit and lose his office, place or employment, and shall forfeit treble damages to the party grieved, to be recovered by action of debt, bill, plaint or information, in any court of record, with costs of suit.

Penalty on persons making warrants without having writs. VI. *And be it further enacted by the authority aforesaid,* That if any sheriff, under sheriff, coroner, or other person having authority, or taking upon him to open writs, shall make any warrant for the summons of any person, as upon any writ, process or suit, or for the arrest or attaching of any person or persons, by his, her or their body or goods, to appear in any court of record (not having before that time the original writ or process warranting the same) that then, upon complaint thereof made to the justice or justices who shall hold the circuit court in the county where the offence shall be committed, or to the judges or justices of the court out of which the process issued, not only the party who made such warrant, but all those who were the procurers thereof, shall be sent for before the same judges or justices, by attachment or otherwise, as the same judge or justices shall think fit, and be examined thereof upon oath; and if the same offence be confessed by the same offenders, or proved by sufficient witnesses, to the satisfaction of the same judges or justices, that then the same judges or justices, who shall so examine the same, shall forthwith, by force of this act, commit every of the same offenders to the gaol of the county or court where the same shall be examined, there to remain without bail or mainprize, until such time as they, amongst them, have fully satisfied and paid unto the party grieved by such warrant, not only the sum of ten pounds, lawful money of this state, but also all such costs and damages as the same judges or justices shall set down that the same party hath sustained thereby, and likewise, twenty pounds each, for their offence against the people of this state.

Penalty for causing persons to be arrested at the suit of others unknown, or without their consent. VII. *And be it further enacted by the authority aforesaid,* That if any person or persons shall, by any ways or means, maliciously, or for vexation and trouble, cause or procure any other person or persons to be arrested, or attached, to answer in any court of record, or in any other court or place, at the suit, or in the name of any person or persons, where indeed there is no such person or persons known, or without the assent, consent or agreement of such person or persons at whose suit, or in whose name such arrest or attachment is or shall be so had and procured; that then, and in such case, every such person and persons who shall so cause or procure any such arrest or attachment of any other person or persons, to be had or made, for vexation or trouble as aforesaid, shall, for every such offence, forfeit and pay to the party or parties so arrested or attached, by his, her or their means or procurement, treble the costs, charges, damages and expences, that he, she or they so arrested or attached, shall be put unto, by reason or occasion of such arrest or attachment so had; to be recovered by action of debt, bill,

plaint or information, in any court of record, with costs of suit ; and shall also forfeit and pay unto such person or persons, in whose name, and at whose suit such arrest or attachment shall be had or made, if then there shall be any such person known, the sum of twenty pounds for every such offence, to be recovered as aforesaid ; and shall also, upon conviction thereof, have and suffer imprisonment by the space of six calender months, without bail or mainprife.

C H A P. XXVII.

An ACT for the more easy Pleading in certain Suits.

Passed 16th February, 1787.

L *BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That if any action, bill, plaint, or suit upon the case, trespass, battery or false imprisonment, is brought, or hereafter shall be brought, against any sheriff, coroner, justice of the peace, mayor, recorder or alderman, bailiff, constable, marshal, collector, or overseer of the poor, and their deputies, or any of them, or any other person, who in their aid or assistance, or by commandment, have done, or shall do any thing touching or concerning his or their office or offices, for or concerning any matter, cause or thing, by them, or any of them, done, by virtue or reason of their or any of their office or offices, that the said action bill, plaint or suit, shall be laid within the county where the trespass or fact hath been, or shall be done and committed, and not elsewhere ; and that it shall be lawful to and for all and every person and persons aforesaid, to plead thereunto the general issue, that he or they are not guilty, and to give such special matter in evidence to the jury which shall try the same, which special matter being pleaded, had been a good and sufficient matter in law, to have discharged the said defendant or defendants of the trespass, or other matter laid to his or their charge ; and that if upon the trial of any such action, bill, plaint or suit, the plaintiff or plaintiffs therein, shall not prove to the jury which shall try the same, that the trespass, battery, imprisonment, or other fact or cause of his, her or their such action, bill, plaint or suit, was or were had, made, committed or done, within the county wherein such action, bill, plaint or suit is, or shall be laid, that then, and in every such case, the jury which shall try the same, shall find the defendant and defendants in every such action, bill, plaint or suit, not guilty, without having any regard or respect to any evidence given by the plaintiff or plaintiffs therein, touching the trespass, battery, imprisonment, or other cause, for which the same action, bill, plaint or suit is or shall be brought : And if the verdict shall pass with the defendant or defendants in any such action, bill, plaint or suit, or the plaintiff or plaintiffs therein become non-suit, or suffer any discontinuance thereof, that in every such case the justices or justice, or other judges or judge, before whom the said matter shall be tried, shall, by force and virtue of this act, allow unto the defendant or defendants, his or their double costs, which he or they shall have sustained by reason of his or their wrongful vexation, in defence of the said action, bill, plaint or suit ; for which the said defendant or defendants shall have like remedy as in other cases, where costs by the laws of this state are given to defendants.

In actions brought for doing any thing by authority of a statute, the defendants may plead not guilty, or alledge that the thing was done by authority of such statute.

cognizance or justification, for the taking of the said distrefs or distresses, making of sale, or other thing done, or to be done by virtue of such statute, alledging in such avowry, cognizance or justification, that the said distrefs, sale, trespass or other thing, whereof the plaintiff or plaintiffs complain, was done by authority of such statute, and according to the tenor, purport and effect thereof, without any expressing or rehearsal of any other matter or circumstance contained in such statute; to which avowry, cognizance or justification, the plaintiff or plaintiffs shall be admitted to reply, that the defendant or defendants did take the said distrefs, make the said sale, or did any other act or trespass, supposed in his or their declaration, of his or their own wrong, without any such cause alledged by the said defendant; whereupon the issue in every such action shall be joined to be tried by a jury, and not

And upon trial the whole matter may be given in evidence.

And defendant to recover treble damages and costs.

after appearance, the same defendant or defendants shall recover treble damages, by reason of his or their wrongful vexation in that behalf, with his or their costs also in that behalf sustained; which damages shall be assessed by the same jury which shall try the issue, or upon a writ to inquire of the damages, as the case may require.

How to declare in actions for debts accruing to the state, by attainder, outlawry, forfeiture or gift.

York, by reason of any attainder, outlawry, forfeiture, gift of the party, or by any other collateral way or means, it shall and may be sufficient in the law, to shew and alledge, in the said suit, generally, that the party to whom the said debt or debts was or were owing, or did belong, such a day and year, did give the same debt or debts to the people of the state of New-York, or was attainted, outlawed, or did commit, or do some offence, forfeiture, deed, act or thing, by reason whereof the said debt or debts did accrue, and ought to remain, come and be to the people of the state of New-York; and that the same matter, so to be shewed, alledged or declared, generally, without shewing or declaring the circumstances thereof, shall be of as good force and effect in the law, to all intents, constructions and purposes, as if the whole matter thereof had been, or were alledged and declared at large, in every point, according to the due order of the common law.

II. *And be it further enacted by the authority aforesaid,*

That if any action of trespass, or other action or suit shall be brought against any person or persons, for taking of any distrefs, making any sale, or any thing done by authority of any statute of this state, made or hereafter to be made, the defendant or defendants, in any such action or suit, shall and may, either plead not guilty, or otherwise make avowry,

otherwise, as is accustomed in other personal actions; and upon the trial of that issue, the whole matter shall or may be given in evidence by both parties, according to the very truth of the same; and after such issue tried for the defendant or defendants, or non-suit of the plaintiff or plaintiffs

after appearance, the same defendant or defendants shall recover treble damages, by reason of his or their wrongful vexation in that behalf, with his or their costs also in that behalf sustained; which damages shall be assessed by the same jury which shall try the issue, or upon a writ to inquire of the damages, as the case may require.

after appearance, the same defendant or defendants shall recover treble damages, by reason of his or their wrongful vexation in that behalf, with his or their costs also in that behalf sustained; which damages shall be assessed by the same jury which shall try the issue, or upon a writ to inquire of the damages, as the case may require.

III. *And be it further enacted by the authority aforesaid*

That in all actions and suits, to be taken or pursued in any court in this state, for the recovery of any debt or debts, which now be, or that hereafter shall happen to appertain, accrue, remain or be to the people of the state of New-

C H A P. XXVIII.

An ACT concerning Wrecks of the Sea, and giving Remedy to Merchants and Others, who be robbed, or whose goods shall be lost on the Sea.

Passed, 16th February, 1787.

BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That if a ship, vessel or boat, or any kind of goods, wares or merchandize, shall be cast by the sea on the land, neither such ship, vessel or boat, nor any thing in them, nor such goods, wares or merchandize, shall be adjudged wreck; but the ship, vessel, or boat, and every thing therein contained, and such goods, wares and merchandize, shall be saved and kept by the view of the sheriff or coroner, or other person appointed for that purpose, who shall cause the same to be appraised, and safely keep them, so that if any person, within a year and a day, sue for those goods, and prove that they were his, or lost in his keeping, they shall be restored to him without delay, upon his paying the charges and expences of saving and keeping the said goods; but if not, they shall remain to the people of this state, and shall, after the expiration of the said year and day, be sold at public vendue, by the sheriff, coroner, or other person appointed for that purpose, who shall have found or seized the same, who shall account for the same at the exchequer, deducting the charges and expences of saving and keeping the same, and of such sale: And he that doth otherwise, and is thereof convicted, shall yield damages to the party grieved, and shall be punished by fine or imprisonment, or both, at the discretion of the court or justices before whom he shall be convicted.

II. And further, That if any merchant, citizen or stranger, or any other, be robbed of his goods upon the sea, and the goods come into any part of this state, and he will sue to recover the said goods, he shall be received to prove the said goods to be his own, by his mark or by his cocket, or by good and lawful merchants, citizens or strangers, or others; and upon such proof, the same goods shall be delivered to him without delay.

III. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the person administering the government of this state for the time being, by and with the advice and consent of the council of appointment, from time to time, by commission under the great seal of this state, to appoint such and so many proper persons in each of the counties of this state, bordering on the sea, as they may think necessary, to aid and assist all such ships and vessels as may happen to be stranded on the coast in the same counties; and such persons so appointed, shall be and hereby are respectively authorised and required to give all possible aid and assistance to all such ships, and vessels, and to the people on board of the same, and to use their utmost endeavours to save the same, and to save, preserve and secure, for the purposes aforesaid, the cargoes of all such ships and vessels, and all goods and chattels whatsoever, which may at any time be cast by the sea upon the land; and to employ such and so many men for the purpose, as they may respectively think proper. And the sheriff, coroner, or other person so appointed as aforesaid, and all persons by them employed, shall have a reasonable allowance out of the same goods so saved and preserved, for saving, preserving and keeping the same. And such sheriff, coroner, or other person so appointed as aforesaid, shall and may detain the same goods until payment thereof; and in case any dispute shall arise concerning such allowance, the same shall be settled and adjusted by any two or more justices of the peace.

dwelling in or near the town or place where the said goods shall be found or saved. And if any person shall take away any goods ing such goods, whatsoever, out of any ship or vessel stranded as aforesaid, or any goods cast by the sea upon the land, or found in any bay or creek, and not deliver the same goods to the sheriff or coroner of the county where the same shall be found, or to one of the persons appointed as aforesaid, within forty-eight hours after taking the same, or shall secret any such goods, or convert them to his own use, every person so offending shall yield double damages to the owner of such goods, to be recovered, with costs of suit, in any court having cognizance thereof, and be further punished by fine or imprisonment, or other corporal punishment, at the discretion of the court, not extending to life or limb. And it is hereby made the duty of every sheriff, coroner, justice of the peace, and constable, and the persons so appointed as aforesaid, to present all offences and offenders against this act, at the sessions of the peace in their respective counties; and the justices of the peace in their sessions, are hereby authorized and required to hear and determine the same.

CHAPTER XXIX.

An ACT declaring what Offences shall be adjudged Treason, and regulating Trials in Cases of Treason and Misprision of Treason.

Passed 16th February, 1787.

I. *BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That if any person do levy war against the people of this state, within this state, or be adherent to the enemies of the people of this state, or of the United States of America, within this state, giving to them aid and comfort in this state, or elsewhere, and be thereof, by good proof, attainted of open deed, such offences, and none other, shall be adjudged treason against the people of the state of New-York.*

II. *And be it further enacted by the authority aforesaid, That concealment, or keeping secret any treason, shall be from henceforth adjudged, deemed and taken to be misprision of treason, and the offender therein, shall forfeit and suffer as in cases of misprision of treason.*

III. *And be it further enacted by the authority aforesaid, That all trials to be had, awarded or made, for any treason or misprision of treason, shall be had and used only according to the due order and course of the common law, and this act, and not otherwise.*

IV. *And be it further enacted by the authority aforesaid, That all and every person and persons whomsoever, that shall be accused and indicted for treason or misprision of treason, shall have a true copy of the whole indictment, with a list of the witnesses to be produced on the trial for proving the said indictment, mentioning their names, profession and place of abode, delivered unto him or them so indicted, five days at the least before he, she or they shall be tried for the same, whereby to enable him, her or them, to advise with counsel thereupon, to plead and make their defence (his, her or their attorney or attorneys, or agent or agents, requiring the same) and that every person accused and indicted, arraigned or tried for any treason or misprision of*

And may make their defence by counsel, their full defence by counsel, and to make any proof that and proof by witnesses. he, she or they can produce by lawful witness or witnesses, who shall then be upon oath, for his, her and their just defence in that behalf. And in case any person or persons so accused or indicted, shall desire counsel, the court before whom such person or persons shall be tried, or some judge of that court, shall, and is hereby authorised and required, immediately upon his, her or their request, to assign to such person or persons, such and so many counsel, not exceeding two, as the same person or persons shall desire, to whom such counsel shall have free access at all reasonable hours. And that all and every person and persons who shall be accused, prisoner to have co. that all and every person and persons who shall be accused, of the penal four indicted and tried for any treason or misprision of treason, days before the trial, shall have copies of the panel, containing the names, places of abode, and additions of the jurors who are to try him, her or them, duly returned by the sheriff, and delivered unto him, her or them, and every of them so accused and indicted respectively, four days at least before he, she or they shall be tried for the same. And that all persons so accused and indicted for any treason or misprision of treason, shall have the compel his witnesses like process of the court where they shall be tried, to compel their witnesses to appear for them, at such trial or trials, as is usually granted to compel witnesses to appear against them.

And process to compel their witnesses to appear for them, at such trial or trials, as is usually granted to compel witnesses to appear against them.

V. *And be it further enacted by the authority aforesaid,* That no person or persons whomsoever, shall be indicted, tried or attainted of treason, or of misprision of such treason, but by and upon the oath and testimony of two lawful witnesses, either both of them to the same overt-act, or one of them to one, and the other of them to another overt-act, of the same treason; unless the party indicted and arraigned or tried, shall willingly, without violence, in open court, confess the same, or in case of treason, shall peremptorily challenge above the number of thirty-five of the jury. And if two or more distinct treasons of divers heads or kinds, shall be alledged in one bill of indictment, one witness produced to prove one of the said treasons, and another witness to prove another of the said treasons, shall not be deemed or taken to be two witnesses to the same treason, within the meaning of this act. And further, That no evidence shall be admitted or given of any overt-act, that is not expressly laid in the indictment, against any person or persons whomsoever.

VI. *And be it further enacted by the authority aforesaid,* That all offences by this act declared to be treason, which shall be committed, perpetrated or done upon the land, out of this state, or upon the sea, shall and may be inquired of, heard and determined in the supreme court of this state, by good and lawful men of the same county where the said court shall sit, in like manner and form, to all intents and purposes, as if the said treasons had been committed, perpetrated and done within the same county.

VII. *And be it further enacted by the authority aforesaid,* That any person or persons, being indicted for any treason or misprision of treason, may be outlawed, and thereby attainted of or for any of the said offences: And that all process of outlawry to be had and made within this state, against any such offenders, being resident, or inhabiting out of the limits of this state, or in parts beyond sea, at the time of the outlawry pronounced against them, shall be as good and effectual in the law, to all intents and purposes, as if such offen-

ders had been resident and dwelling within this state, at the time of such process awarded, and outlawry pronounced: But if the party

But party outlawed so outlawed; being out of this state as aforesaid, shall, within one year next after the said outlawry pronounced, or judgment given upon the said outlawry, yield or surrender himself, to either of the justices of the said supreme court, for

the time being, and offer to traverse the indictment, whereupon the said outlawry shall be pronounced as aforesaid, that then he shall be received to the said traverse; and if he shall be thereupon found not guilty by the verdict of a jury, he shall clearly be acquitted and discharged of the said outlawry, and of the penalties and forfeitures by reason of the same; and upon the trial of such traverse, the defendant shall, in all respects, have the benefit of this act.

VIII. *And be it further enacted by the authority aforesaid,* That no person or persons whomsoever, shall be indicted, tried or prosecuted for any treason or misprision of treason, that hath been, or shall be committed or done, unless the same indictment be found by a grand jury, within three years next after the treason or offence done or committed:

IX. *And be it further enacted by the authority aforesaid,* That no indictment for any of the offences aforesaid, nor any process or return thereupon, shall be quashed, on the motion of the prisoner, or his or her counsel, for mis-writing or mis-spelling, unless exception be taken before any evidence given.

Indictments or process not to be quashed for mis-writing or mis-spelling, unless exception be taken before any evidence given. *And be it further enacted by the authority aforesaid,* That no indictment for any of the offences aforesaid, nor any process or return thereupon, shall be quashed, on the motion of the prisoner, or his or her counsel, for mis-writing or mis-spelling, unless exception be taken and made in the court where such trial shall be, by the prisoner, or his or her counsel, before any evidence given in open court upon such indictment; nor shall any such mis-writing or mis-spelling, after conviction on such indictment, be any cause to stay or arrest judgment thereupon; but nevertheless, any judgment given upon such indictment, shall and may be liable to be reversed upon a writ of error, in the same manner, and in no other, than as if this act had not been made.

X. *And be it further enacted by the authority aforesaid,* That every offender or offenders, being hereafter lawfully convicted of any manner of treason, by presentment, confession, verdict, or process of outlawry, according to the due course and custom of the laws of this state, shall lose and forfeit to the people of this state, all such lands, tenements and hereditaments, which any such offender or offenders shall have, of any estate of inheritance in his own right, in use or possession, by any right, title or means, within this state, at the time of any such treason committed, or at any time after; and also all his, her and their goods and chattels, saving to every person and persons, their heirs and successors, other than the offenders and their heirs, and such person and persons as claim to any their uses, all such rights, titles, interests, possessions, leases, rents, reversions, offices, and other profits, which they or any of them shall have at the day of committing such treasons, or at any time before, in as large and ample manner as if this act had never been made.

CHAP. XXX.

An ACT concerning Appeals of Felony.

Passed 16th February, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That all appeals of things done within this state, shall be tried and determined

according to the laws of this state : and that no appeal shall be made, or in any wise pursued before either house of the legislature.

No person to be taken on the appeal of a woman, for the death of any other than her husband. *II. And be it further enacted by the authority aforesaid,* That no person shall be taken or imprisoned upon the appeal of a woman, for the death of any other than of her husband.

III. And be it further enacted by the authority aforesaid, That if any married woman or maid, or any other woman, shall be ravished and doth not consent to the ravisher, neither before nor after the rape committed, such woman so ravished, may sue and prosecute against such offenders by appeal, and pursue the same to judgment and execution. But if such woman, after the rape committed, consent to the ravisher, she shall be thereby barred of her appeal. And further, That wheresoever and whensoever any woman shall be ravished, and after such rape do consent to such ravisher, the husband of such woman, if she have a husband, or if she have no husband in life, then her father, or other next of her blood, shall from henceforth have the suit, to pursue, and may sue by appeal, against the same offenders and ravishers, in this behalf, to have them thereof convicted, and pursue the same to judgment and execution, although the same woman, after such rape, do consent to the ravisher.

IV. And be it further enacted by the authority aforesaid, That in all appeals of murder, if the appellant declare the deed, the year, the day, the hour, and the town or place, where the deed was done, and with what weapon the person killed was slain, the appeal shall stand good in effect ; and no such appeal shall be abated for default of fresh suit, if the party shall sue within the year and the day after the deed done.

V. And be it further enacted by the authority aforesaid, That if any person be slain or murdered, and therefore the slayers, murderers, abettors, maintainers and comforters of the same, be indicted, that the same slayers and murderers, and all other accessories of the same, shall be arraigned and determined of the same felony and murder, at any time, at the suit of the people of this state, within the year after the same felony and murder done, and not tarry the year and day for any appeal to be taken for the same felony or murder. And if any person named as principal or accessory, shall be acquitted of any such murder or felony, at the suit of the people of this state, within the year and day, that then the same justices, before whom such person shall be acquitted, shall not suffer him to go at large, but shall either remit him again to prison, or else let him to bail, after their discretion, until that year and day be passed. And if the said felons or murderers, and accessories so arraigned, or any of them, be acquitted, or if they, or any of them, happen to be attainted, the wife or next heir to the person so slain, as shall require it, may take and have their appeal of the same death and murder, within the year and day after the same felony and murder done, against the said persons so arraigned and acquitted and all other their accessories, or against the accessories of the said principal, or any of them so attainted, or against the principals so attained, if they be alive ; and that the appellant shall have such and the like advantage as if the said acquittal or attainder had not been, the said acquittal or attainder notwithstanding. And further, That the wife or heirs of the persons slain, may said persons so slain or murdered, as the case shall require,

Wife, or heirs of persons slain, may said persons so slain or murdered, as the case shall require,

may commence their appeal in proper person, at any time within the year after the said felony done, before one of the coroners of the county where the said felony or murder was done, or before the people of the state of New-York, in their supreme court, or before the justices of the gaol delivery, or justices assigned to hear and determine; and the appellants, in any appeals of murder or death of any person, or of rape, or any other felony, may make their attornies, and appear and prosecute the same appeals by their attornies, after the same appeals be commenced, to the end of the suit, and execution of the same.

C H A P. XXXI.

An ACT touching the Bailment of Persons.

Passed 16th February, 1787.

F. BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same. That no sheriff, under sheriff, coroner, gaoler, or other officer, shall let out of prison or permit to go at large, on bail or otherwise, any person by them or any of them arrested, or to be arrested, or being in their or any of their custody, by virtue of any writ, process, warrant or commitment, for any treason or felony, or misprision of treason, or upon any condemnation, execution or capias utlagatum, or for surety of the peace; or any person taken or arrested, or committed, or to be taken, arrested or committed, by special commandment of any court or justices, upon pain of being punished by fine and imprisonment, and to answer the damages to the party grieved, if any be thereby aggrieved.

II. And for as much as divers persons have been arrested and imprisoned for suspicion of felony, sometimes of malice, and sometimes of light suspicion, and so kept in prison without bail or mainprize to their great vexation and trouble; Therefore, *Be it further enacted by the authority aforesaid,* That the justices of the peace, in their general sessions, or any two of them at the least, being present together out of sessions, in every county and city of this state, shall have authority and power, by their discretion, to let such prisoners or persons so arrested in their respective cities or counties, to bail or mainprize, unto their next general sessions, or unto the next gaol delivery, to be holden in the same county or city where the said person or persons shall be arrested or suspected (as the case may require.) And further, That the said justices, or one of them, when any such prisoner shall be brought before them, before any bailment or mainprize, shall take the examination of the said prisoner, and information of them that bring him, of the fact and circumstances thereof, and the same, or as much thereof as shall be material to prove the felony or offence, shall put into writing, before they make the same bailment; which said examinations, together with the said bailment, the said justices shall certify in writing, subscribed or signed with their own hands, at their next general sessions, or the next gaol delivery, to which the said person or persons so let to bail or mainprize shall be bound to appear. And the said justices are hereby authorised and required to bind all such by recognizance, as do declare any thing material to prove the said felonies or offences, to appear at their next general sessions, or at the next gaol delivery, to be holden within the county or city where the trial thereof shall be, as the case may require, then and there to give evidence against the said party, and shall certify such recognizance and recognizances in writing, as they

shall tak eto the same court, together with the said examinations and bailment; and in case any justice of the peace, or mayor, recorder or alderman, acting as a justice of the peace, shall offend in any thing ^{Justices offending} ^{against this act, to be} contrary to the true intent and meaning of this act, the justices of the peace in their general sessions of the peace, or the justices of the gaol delivery of the city or county where such offence shall be committed, upon due proof thereof, by examination before them, shall, for every such offence, set such fine on every of the same justices of the peace, as the same justices of the peace, in their general sessions, or the justices of gaol delivery, shall think meet, and estreat the same as other fines and americiaments assessed before justices of the peace, in their general sessions of the peace, or before justices of the gaol delivery, ought to be estreated.

C H A P. XXXII.

An ACT concerning Sheriffs, and the Service and Return of Process.

Passed 19th February, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That none shall be sheriff of any city or county of this state, unless he be a substantial freeholder within the same city or county where he shall be sheriff. And further, That every person hereafter to be appointed to the office of sheriff of any city or county within this state, before he be permitted to execute the said office, shall enter into bond to the people of this state, in the penal sum of two thousand pounds, with two or more sufficient sureties, being freeholders, jointly and severally, in the penal sum ^{Sheriffs to give} ^{bonds in 2000l. with} of two thousand pounds, to answer the people of this state, and the parties, if any will complain, and conditioned that such sheriff shall well and faithfully, in all things, perform and execute the said office of sheriff, without fraud, deceit, or oppression; which bonds shall be filed in the clerk's office of the counties respectively, for which the respective sheriffs shall be appointed, and the said clerks respectively shall judge of and determine the competency of such sureties. And in case of any recovery by any party aggrieved against any sheriff, for any default or misconduct in his office, it shall be lawful for the justices of the supreme court, upon motion in open court, to order the bond so given by such sheriff, to be put in suit against such sheriff or his sureties, or all, or any, or either of them; and when judgment shall be obtained on such bond, the said supreme court shall, upon motion in open court, direct so much money to be levied thereon, as shall be sufficient to pay the party the debt or damages so recovered, with costs, and to be paid to such party grieved; but if such sheriff or his sureties, or either of them, shall pay the debt or damages so recovered against such sheriff, with costs, then such suit on such bond shall thereupon be stayed, and be no further prosecuted. And further, That if after judgment obtained upon such bond, any other party aggrieved, and who shall have recovered any debt or damages against such sheriff, for any default or misconduct in his office, shall apply to the said supreme court for relief, the said supreme court, shall, upon motion in open court, direct such further sum to be levied on such judgment on such bond, as shall be sufficient to pay the debt or damages so recovered, with costs, and to be paid to such party aggrieved, and soasoften as any recovery shall be had against such sheriff, for any misconduct or default in his office; Provided, That the sureties in any bond

shall not be charged by virtue of this act, beyond the amount of the sums in which they are or shall be bound in any such bond; And provided, if two or more such recoveries shall be had against such sheriff, in the same term, or at the same time, amounting together to more than the whole amount of the sums contained in such bond, the said supreme court shall order the monies, to be levied thereupon, to be distributed to the parties respectively, in proportion to the respective amounts of their respective recoveries.

Sheriffs to have custody of gaols, and appoint keepers.

II. *And be it further enacted by the authority aforesaid,* That the sheriff of each of the respective cities and counties of this state, shall have the custody, rule, keeping and charge of the gaols and prisons, and the prisoners in the same, in the same city or county, as before this time they were wont to have; and the same sheriffs respectively shall put in such keepers for whom they will answer: And if

Felony in gaolers to compel any prisoner to become an appellant.

the keeper or under keeper of any prison, by too great duties of imprisonment, and by pain, make any prisoner that he hath or shall have in his ward, to become an appellant against his will, it shall be felony, and if any keeper be thereof convicted or attainted, he shall have judgment as in cases of felony.

No sheriff or other officer to take any fees not allowed by law.

III. *And be it further enacted by the authority aforesaid,* That no sheriff or other officer or minister, by occasion, or under colour of their or any of their office, shall take any other thing, or more, by themselves, or by any other person, to their or any of their use, profit or avail, of any person by them, or any of them, to be arrested or attached, nor of any other, for the omitting of any arrest or attachment, to be made by their body, or of any person by them, or of any of them, by force or colour of their, or any of their office, arrested or attached for fine, fee, suit of prison, mainprize, letting to bail, or shewing any ease or favour to any such person so arrested or attached, or to be arrested or attached, for their, or any of their reward or profit, but such as are or shall be allowed and established by the law of this state. And further,

Sheriff annually to appoint deputies in the supreme court, to receive writs.

That every sheriff in this state, shall yearly make a deputy of record in the supreme court, to receive all manner of writs and warrants to be delivered to them. And moreover,

Penalty on delinquent sheriffs.

That every sheriff, or other officer or minister, who shall do contrary hereto, in any point, shall forfeit and pay to the party in that behalf aggrieved, his treble damages, to be recovered with costs of suit, and shall also forfeit the sum of one hundred pounds, at every time that they or any of them do the contrary thereof in any point; the one moiety thereof to the people of this state, and the other moiety thereof to the party who shall sue for the same, to be recovered, with costs of suit, in any court of record, by action of debt, bill, plaint or information.

IV. *And be it further enacted by the authority aforesaid,* That such as do fear the malice of sheriffs or others, having the return of writs, shall deliver their writs, original and judicial, in the county where they are to be executed, and may take of the sheriff, under sheriff, or other officer to whom the same writ shall be directed, a certificate wherein the names of the demandants or plaintiffs, and tenants or defendants named in the writ, and the day of delivering the writ, shall be mentioned; and the sheriff or under sheriff, or other officer to whom the writ shall be directed, shall, at the request of the party delivering the writ, put his seal to the said certificate for a testimony; and if the sheriff or under sheriff, or the officer to whom the writ shall be directed,

will not put his seal to such certificate, the witness of other credible persons being present, shall be taken, and shall put their seals to such certificate. And

If writ is not returned, how damages to be assessed and recovered. further, That at what time or place soever in the county, any person doth deliver any writ to the sheriff, or the under sheriff, or other officer to whom the writ shall be directed

ed they shall receive the same writ, and make a certificate thereof as aforesaid, without taking any thing therefore ; and if the sheriff or other officer to whom the said writ shall be directed, do not return the same writ, and complaint thereof to be made to the court where such writ shall be returnable, if the writ was to be executed in the same county where such court shall then sit, an inquest shall thereupon be taken, in the presence of such sheriff or other officer, if he will attend in the same court, to enquire whether the writ was delivered, and what damages the party hath sustained, having regard to the quality and quantity of the action, and the peril that may happen by reason of the delay ; and if it be found by the inquest that the writ was delivered, the party shall recover his or her damages aforesaid, against such sheriff, under sheriff, or other officer, with the costs of taking the same inquest, and shall have execution for the same, in like manner as for damages in any other cases ; but if such writ was to be executed in any other county, then a writ judicial shall be awarded to the justices or justice who shall hold the next circuit court in such county, to enquire as aforesaid, and an inquest shall be thereupon taken in such circuit court, and returned ; and if it be found by the inquest that the writ was delivered, the party demandant or plaintiff, shall recover and have execution for the damages and cost as aforesaid. and by the same means there shall be remedy, where the sheriff or other officer returns that the writ came too late, so that he could not execute the same. And moreover, That in all cases where the sheriff or other officer shall be commanded, that of the issues of the lands and chattels of any person he answer, in the plaintiff demand hearing of the return, it shall be granted ; and if the plaintiff offer to aver that the sheriff or other officer might and ought to have returned greater issues, it shall be inquired, by an inquest to be taken in the manner aforesaid, of what and how great issues the sheriff or other officer might and ought to have made return, from the day of the writ purchased, unto the day of the return thereof ; and if it be found that he hath not answered for the whole, he shall be charged with the overplus, and shall also be amerced for the concealment. And it is hereby declared, that rents, corn in the grange, and all moveables (except arms, implements of trade and house-hold goods) be contained within the name of issues.

Sheriff's duty in cases of resistance. V. *And be it further enacted by the authority aforesaid,* That when the sheriff, or any of his deputies shall find that resistance will be made against any process of execution, the sheriff, laying aside all other things, and taking with him the power of the county, shall forthwith go in his proper person, and do execution ; and if he find resistance, he shall certify to the court the names of the resisters, aiders, consenters, commanders and favourers, and by a writ judicial, they shall be attached by their bodies, to appear in the same court, and if they be convicted of such resistance, they shall be punished by fine and imprisonment.

VI *And be it further enacted by the authority aforesaid* That sheriffs and other officers to whom the return of any writs or process shall appertain, shall put their own names to the returns of the same writs and process, so that the court may know of whom they took such returns, if need be ; and if

any sheriff or other officer leave out his name in any return, he shall be amerced, and also answer the damages to the party.

Sheriffs and gaolers to receive thieves and felons from constables and other officers. VII. *And be it further enacted by the authority aforesaid,* That sheriffs and gaolers shall, from henceforth, receive and safely keep in prison, all thieves and felons appealed, indicted, or taken in the fact, who shall be taken and attached

by constables and other officers, by the delivery of the constables and other officers, without taking any thing for the receipt. And further, That as well the justices of the peace, at their general sessions in their respective counties, as the justices of the supreme court and the justices of the goal delivery and justices assigned or authorized to hear and determine shall have power to hear the complaints of those who will complain against sheriffs and gaolers in such cases, and to punish the sheriffs and gaolers, if they be found guilty,

Sheriff's on process out of exchequer, to acquit debtors for money received. VIII. *And be it further enacted by the authority aforesaid,* That every sheriff, and other officer to whom any process out of the exchequer shall be directed and delivered, for

levying any debt, fine or forfeiture, to the people of the state of New York, shall, upon demand, shew the same process and deliver a copy thereof to the debtor or person against whom the same process shall be issued, without denying to any, and without taking any reward; and shall upon receiving or levying the money mentioned in such process, lawfully acquit the debtor thereof, and account for the same at his next account, after he shall have received or levied the same; and if any sheriff or other officer do otherwise, and be thereof convicted, he shall render to the party aggrieved treble damages and costs of suit, and be further punished by fine, according to the discretion of the court wherein he shall be convicted.

Goods of accused persons not to be seized until conviction. IX. *And be it further enacted by the authority aforesaid,* That no sheriff or other person, shall take or seize the goods of any person arrested or imprisoned for suspicion of felony, before that the same person so arrested or imprisoned, be

convicted or attainted of such felony according to law or the same goods be otherwise lawfully forfeited, upon pain to forfeit double the value of the goods so taken, to him who shall be so injured in that behalf; to be recovered with costs of suit, in any court or record, by action of debt, bill, plaint or information.

X. And whereas sheriffs, and other officers, sometimes seize the lands, goods, and chattels of divers persons, surmising that they be outlawed or their lands, goods, and chattels forfeited, where they be not, because that they bear such names as those who be outlawed, or whose lands, goods and chattels be forfeited, for default of good declaration of the name, surname and addition; For remedy whereof, *Be it further enacted by the authority*

aforesaid, That if any will complain in such case, he or she shall have a writ of indentate nominis: and if the lands, goods or chattels of any person shall, in such case, be seized by any sheriff or other officer, such person shall find surety before the sheriff or other officer who hath the warrant, to

seize, to answer to the people of this state, of the value of such lands, goods and chattels, in case he or she cannot discharge himself or herself; and such sheriff or other officer, shall thereupon restore the same lands, goods and chattels, to the party, without taking any thing of the party. And if such sheriff or other officer do not the same, and thereof be convicted, the party shall have suit against such sheriff or other officer, and recover his or her

double damages and costs of suit ; and such sheriff or other officer shall be further punished by fine for his offence.

XI. *And be it further enacted by the authority aforesaid, That as well the justices of the peace in their open general sessions, and the justices of gaol delivery, and justices assigned or authorized to hear and determine, within the limits of their authority respectively, as the justices of the supreme court, shall have full power and authority to hear and determine all offences and defaults, done contrary to this act, as well by presentment and information, as indictment ; and upon conviction of the offenders, to award execution for the levying of the forfeitures aforesaid, by fieri facias, attachment, capias, or exigent.*

C H A P. XXXIII.

An ACT that the solemn Affirmation and Declaration of the People called Quakers, shall be accepted instead of an Oath.

Passed 19th February, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That every Quaker who shall be required, upon any lawful occasion, to take an oath, in any case where by law an oath is required, shall, instead of the usual form, be permitted to make his or her solemn affirmation or declaration, in the words following; to wit : *I do solemnly, sincerely, and truly declare and affirm.* Which solemn affirmation or declaration shall be adjudged and taken, and is hereby enacted and declared, to be of the same force and effect, to all intents and purposes, in all courts of justice, and other places where by law an oath is required, as if such Quaker had taken an oath in the usual form.

II. *And be it further enacted by the authority aforesaid, That in all cases wherein by any act or acts of the legislature of this state, now in force, or hereafter to be made, an oath is or shall be allowed, authorized, directed or required, the solemn affirmation or declaration, in the form above described, of any of the people who shall be a member of the religious society of the people called Quakers, or shall usually associate with the people called Quakers, in their religious worship, or be generally reputed to be a Quaker, shall be allowed and taken instead of such oath, although no particular or express provision be made for that purpose, in such act or acts : And all persons who are or shall be authorized or required to administer such oath, shall be, and hereby are authorized and required to administer the said affirmation or declaration. And the said solemn affirmation or declaration, so made as aforesaid, shall be adjudged and taken, and is hereby enacted and declared to be of the same force and effect, to all intents and purposes, in all courts of justice, and other places where by law an oath is or shall be allowed, authorized, directed or required, as if such Quaker had taken an oath in the usual form.*

III. *And be it further enacted by the authority aforesaid, That if any person making such solemn affirmation or declaration, shall be lawfully convicted of having wilfully, falsely and corruptly affirmed and declared any matter or thing, which if the same had been deposed in the usual form, would have amounted to wilful and corrupt perjury, every person so offending, shall incur and suffer the like pains, penalties and forfeitures as by the laws and statutes of this state, are or shall be directed to be inflicted on persons convicted of wilful and corrupt perjury.*

IV. *Provided always, and be it further enacted by the authority aforesaid,* That no Quaker, or reputed Quaker, shall, by virtue of this act, be compelled to serve on any juries in criminal cases, nor to act as an assessor or collector; any thing in this act to the contrary notwithstanding.

C H A P. XXXIV.

See 13th sess. ch. 48 *An ACT to amend the Charter of the Corporation for the Relief of the Widows and Children of Clergymen in the Communion of the Church of England, in America.*

Passed 19th February, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That the said corporation, hereafter, in all their acts and proceedings, and in all suits, pleas, deeds, gifts, obligations, matters and things, in any wise respecting the same, shall be called and known by the name or stile of The corporation for the relief of the widows and children of clergymen of the Protestant Episcopal Church in the United States of America; the said charter, or any clause thereof, or usage thereupon notwithstanding.

II. And whereas it is provided by the said charter, that the bye-laws of the said corporation shall not be contrary to the laws of that part of Great-Britain, called England; *Be it enacted by the authority aforesaid,* That the said clause be, and the same hereby is repealed.

III. *And be it further enacted and provided,* Instead thereof, that the bye-laws or regulations of the said corporation, shall not be repugnant to the constitution or laws of this state.

IV. *And be it further enacted by the authority aforesaid,* That the last clause in the said charter, subjecting the accounts and proceedings of the said corporation to the revisal and ratification therein expressed, be and the same is hereby repealed and annulled. *And it is hereby enacted,* That the said accounts may, in the manner directed by the said charter, hereafter be ratified and confirmed, by the governor, the chancellor and the chief justice of this state for the time being, or any two of them; or be subjected by them, or any two of them, to such revisal, check and confirmation, as by them, or any two of them, may be thought just and reasonable.

V. *And be it further enacted by the authority aforesaid,* That the said charter, and every part thereof, as altered and amended by this act, be, and the same hereby is confirmed; the non user of the powers and privileges thereby granted, in any wise notwithstanding.

C H A P. XXXV.

An ACT concerning Counsellors, Attornies, Solicitors, Advocates, and Proctors of the several Courts in this State.

Passed 20th February, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That it shall be lawful for all and every person and persons whomsoever, of full age and sound memory other than defendants in cases where corporal punishments may be inflicted, to make and appear by his her or their attorney or attornies, in all and every or any suit, action or plea, real or person.

al, moved or to be moved, by or against him, her or them, in any court in this state; and to commence pursue, prosecute or defend the same suit, action or plea, in person, or by his, her or their attorney or attorneys.

II. *And be it further enacted by the authority aforesaid,* That all warrants of attorney of the parties, or of any or either of them, in all suits, actions and pleas, in any court of record, shall be taken before the judges or justices of the respective courts in which the same suit, action or plea is or shall be depending, or one of them, or before the chancellor of this state for the time being, who shall certify and send the warrants of attorney before him taken, to the judges or justices of the court in which the suit, action, or plea is or shall be depending. And further, That such as cannot conveniently come before any or either of the judges, or justices of the court in which such suit action or plea is or may be depending, or before the chancellor, to make his, her or their attorney or attorneys in the same suit, action or plea, may appear before such judges, justices or chancellor, or either of them, by his, her or their agent or attorney, having sufficient authority theretore in writing, by letter of attorney or otherwise, from the person or persons in whose behalf such suit, action or plea is or may be depending; and in cases where it may be necessary, shall have a writ out of the chancery to some sufficient man, to receive his, her or their warrant of attorney in the same suit, action or plea; and in all cases where any infant is or shall be entitled to any suit or action, some or one of the next friends of such infant shall be admitted, in manner aforesaid, to sue and prosecute for such infant. And if any infant is or shall be impleaded, a guardian shall be appointed, in manner aforesaid, for such infant to defend the same suit, action or plea, for the same infant.

III. *And be it further enacted by the authority aforesaid,* That no person shall henceforth be admitted a counsellor, attorney, solicitor, advocate or proctor, in any court, but such as have been brought up in the same court, or are otherwise well practised in soliciting causes, and have been found, by their dealings, to be skilful, and of honest disposition; and that every person hereafter to be admitted a counsellor, attorney, solicitor, advocate or proctor of any court, shall, before such admission, be examined by the judges or justices of the same court. and such only as shall be found virtuous and of good fame, and of sufficient learning and ability. shall be admitted, and their names shall be put in a roll or book to be kept in each court respectively, for that purpose; and each and every person so admitted shall, upon such admission, in open court, take and subscribe an oath of office in the words following:

I do swear, That I will truly and honestly demean myself in the practice of an attorney (or of a counsellor, solicitor, or proctor, or of an advocate, as the case may be) according to the best of my knowledge and ability.

IV. *And be it further enacted by the authority aforesaid,* That if any counsellor, attorney, solicitor, advocate or proctor of any court heretofore admitted, or hereafter to be admitted, shall be found notoriously in default of record or otherwise, he shall be put out of the roll, and never after be received to act as a counsellor, attorney, or solicitor, advocate or proctor, in any court. And further, That when any attorney shall die, or cease to act, or be put out

of the roll of attornies, the persons for whom he was attorney, shall be warned to appoint another attorney in his place, so that in the mean time no damage or prejudice may come to the party.

V. *And be it further enacted by the authority aforesaid,* That if any counsellor, attorney, solicitor, pleader, advocate, proctor, or other, do any manner of deceit or collusion, in any court of justice, or consent unto it in deceit of the court, or to beguile the court or the party, and thereof be convicted, he shall be punished by fine and imprisonment and shall moreover pay to the party grieved, treble damages, and costs of suit.

Penalty on attorneys, solicitors and proctors, for delaying suits, or demanding money not due.

VI. *And be it further enacted by the authority aforesaid,* That if any attorney, solicitor or proctor, do or shall wilfully delay his client's suit, to work his own gain, or wilfully demand, by his bill, any sums of money or allowance, for or upon account of any money which he hath not laid out or disbursed, or become answerable for, in every such case the party grieved shall have his or her action against such attorney, solicitor or proctor, and recover therein treble damages and costs of suit: And such attorney, solicitor or proctor, shall thereupon be put out of the roll, and be discharged from thenceforth from being an attorney, solicitor or proctor any more.

VII. *And be it further enacted by the authority aforesaid,* That no attorney, solicitor or proctor, shall commence any suit or action for recovery of any fees, charges or disbursements, until eight days after he shall have delivered to the party to be charged therewith, or left for him or her, at his or her dwelling-house, or last place of abode, a bill of such fees, charges and disbursements, written in a common legible hand, in the English tongue (except law terms, and the names of writs, and in words at length, except times and sums, and such abbreviations as are commonly used in the English language) subscribed with the proper hand of such attorney, solicitor or proctor.

VIII. *And be it further enacted by the authority aforesaid,* That the attorney for the plaintiff or demandant, in every action or suit, shall file his warrant, of attorney with the proper officer of the court where the cause is or shall be depending, the same term he declares, and the attorney for the defendant or tenant, shall file his warrant of attorney as aforesaid, the same term he appears, upon pain to forfeit for every neglect or offence, the sum of ten pounds, to be recovered by action of debt, bill, plaint or information; the one moiety thereof to the use of the people of this state, and the other moiety thereof to the officer to whom or in whose office the same warrant should be delivered, entered or filed; and also to make satisfaction to the party grieved, according to the discretion of the court where any such default or neglect shall be had or made.

IX. *And be it further enacted by the authority aforesaid,* That every process for arresting, and every writ of execution, or some label annexed, shall, before service or execution thereof, be subscribed or indorsed with the name of the attorney or person by whom the same process or writ of execution shall be sued forth.

X. *And be it further enacted by the authority aforesaid,* That if any attorney of any court of record, shall knowingly and willingly permit or suffer any other person to sue out any writ, or commence, prosecute or defend any action or suit, in his name, and be thereof convicted, he shall be put out

of the roll of attornies, and from the time of such conviction be disabled to practise in such court. And further, That as well the same attorney as he who shall sue out any such writ, or commence, prosecute or defend any such action or suit, shall each of them forfeit, for every such offence, the sum of twenty pounds; the one moiety thereof to the people of this state, and the other moiety thereof to the party grieved; to be recovered by action of debt, bill, plaint or information, in any court of record.

What persons not XI. *And be it further enacted by the authority aforesaid,* allowed to act as That from and after the first day of May next, on clerk, or counsellors, attornies, register, or deputy register, of any court, nor any examiner, solicitors, advocates, or proctors. or master of the court of chancery, shall act as a counsellor, attorney, solicitor, advocate or proctor, in any suit, action or matter in the same court; and that no under sheriff, sheriff's clerk, coroner or bailiff, shall, during his continuance in office, act as counsellor attorney, solicitor, advocate or proctor, in any court whatsoever. Provided nevertheless, That every such clerk, register or deputy register, examiner, or master of the court of chancery, who now practises as counsellor, attorney, solicitor, advocate or proctor, shall and may proceed to prosecute such actions and suits, in which he now is, or before the first day of May next shall be attorney of record, solicitor or proctor, until such suit or action is finally concluded. *110*

C H A P. XXXVI.

An ACT concerning Tenures.

Passed 20th February, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That it shall forever hereafter be lawful for every freeholder to give, sell or alien the lands or tenements whereof he or she is, or at any time hereafter shall be, seised in fee simple, or any part thereof, at his or her pleasure, so always that the purchaser shall hold the lands or tenements so given, sold or aliened, of the chief lord, if there be any, of the same fee, by the same services and customs by which the person or persons making such gift, sale or alienation, before held the same lands or tenements. And if such freeholder give, sell or alien only a part of such lands or tenements, to any, the feoffee or alienee shall immediately hold such part of the chief lord, and shall be forthwith charged with the services for so much as pertaineth or ought to pertain to the said chief lord, for the same parcel, according to the quantity of the land or tenement so given, sold or aliened; and so in this case, the same part of the service shall remain to the lord to be taken by the hands of the feoffee or alienee, for which he or she ought to be attendant and answerable to the same chief lord, according to the quantity of the land or tenement given, sold, or aliened, for the parcel of the service so due.

II. *And be it further enacted by the authority aforesaid.* That all wardships, liveries, primer seisin and ousterlemains, values and forfeitures of marriage, by reason of any tenure by knights service, and all mean rates, and all other gifts, grants and charges, incident or arising for or by reason of wardships, liveries, primer seisin or ousterlemains, shall be, and hereby are declared to be taken away and discharged, from the thirtieth day of August, in the year of our Lord one thousand six hundred and sixty-four: And that all fines for alienations, seizures and pardons for alienations, tenure by homage,

and all charges incident or arising for or by reason of wardship, livery, primer seisin, ousterlemain, or tenure by knights service, escuage, and also relief, and aid pur file marrier, and aid pur fair fitz chivalier, and all other charges incident thereunto, shall be, and hereby are likewise declared to be taken away and discharged from the said thirtieth day of August, in the year of our Lord one thousand six hundred and sixty four; and that all tenures by knights service, and by knights service in capite, and by soccage in capite, and the fruits and consequents thereof happened, and which shall or may hereafter happen or arise thereupon, or thereby, shall be and hereby are declared to be taken away and discharged, and forever abolished; any law, statute, custom or usage to the contrary thereof in any wise notwithstanding.

III. *And be it further enacted by the authority aforesaid,* That all tenures of any honours, manors, lands, tenements or hereditaments, or of any estate of inheritance at the common law, held either of the king or of any other person or persons, bodies politic or corporate, at any time before the fourth day of July, in the year of our Lord one thousand seven hundred and seventy-six, are hereby declared to be turned into free and common soccage, to all intents and purposes, and shall be construed, adjudged and deemed to be free and common soccage from the time of the creation thereof, and forever thereafter; and that the same honours, manors, lands, tenements and hereditaments, shall forever hereafter stand and be discharged of all tenure by homage, escuage, voyages royal and charges for the same, wardships incident to tenure by knights service, and values and forfeitures of marriage, and all other charges incident to tenure by knights service, and of and from relief, aid pur file marrier, and aid pur fair fitz chivalier; any law, statute, usage or custom to the contrary in any wise notwithstanding.

IV. *And be it further enacted by the authority aforesaid,* That all conveyances and devises of any manors, lands, tenements or hereditaments, at any time heretofore made, shall be expounded to be of such effect, as if the same manors, land, tenements and hereditaments had been then held, and continued to be holden in free and common soccage only; any law, statute, custom or usage to the contrary hereof in any wise notwithstanding.

V. *Provided always, and be it further enacted by the authority aforesaid,* That this act, or any thing herein contained, shall not take away, nor be construed to take away or discharge, any rents certain, or other services incident or belonging to tenure in common soccage, due or to grow due to the people of this state, or any mean lord, or other private person, or the fealty or distresses incident thereunto.

VI. *And be it further enacted by the authority aforesaid,* That the tenure upon all gifts, grants and conveyances heretofore made, or hereafter to be made, of any manors lands, tenements or hereditaments, of any estate of inheritance, by any letters patent under the great seal of this state or in any other manner, by the people of this state, or by the commissioners of forfeitures, shall be and remain allodial, and not feudal, and shall forever hereafter be taken and adjudged to be and continue in free and pure allodium only; and shall be forever discharged of all wardship, value and forfeiture of marriage, livery, primer seisin, ousterlemain, relief, aid pur file marrier, aid pur fair fitz chivalier, rents, renders, fealty, and all other services whatsoever: any law, statute, reservation, custom or usage to the contrary hereof in any wise notwithstanding.

Tenure of lands granted by the state, to be allodial, and not feudal.

C H A P. XXXVII.

An ACT concerning Uses.

Passed 20th February, 1787.

I. *BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That where any person or persons stand or be seised, or at any time hereafter shall stand or be seised of and in any manors, messuages, lands, tenements, rents, services, reversions, remainders or other hereditaments, to the use, confidence or trust of any other person or persons, or of any body politic, by reason of any bargain, sale, feoffment, fine, recovery, covenant, contract, agreement, will or otherwise, by any manner of means whatsoever; in every such case, all and every such person and persons, and bodies politic, that have, or hereafter shall have, any such use, confidence or trust, in fee simple, for term of life or of years, or otherwise, or any use, confidence or trust, in remainder or reversion, shall from henceforth stand and be seised, deemed and adjudged, in lawful seisin, estate and possession of and in the same manors, messuages, lands, tenements, rents, services, reversions, remainders and hereditaments, with their appurtenances, to all intents, constructions, and purposes in the law, of and in such like estates, as they had, or shall have, in use, trust or confidence, of or in the same; and that the estate, title, right and possession that was or shall be in such person or persons that were or hereafter shall be seised of any lands, tenements or hereditaments, to the use, confidence or trust, of any such person or persons, or of any body politic, be from henceforth clearly deemed and adjudged to be in him, her or them, that have or hereafter shall have such use, confidence or trust, after such quality, manner, form and condition, as they had before, in or to the use, confidence or trust that was or shall be in them. And further, That where divers persons be, or hereafter shall be jointly seised of and in any lands, tenements, rents, reversions, remainders or other hereditaments, to the use, confidence or trust, of any of them so jointly seised, in every such case the person or persons who have, or hereafter shall have, any such use, confidence or trust, in any such lands, tenements, rents, reversions, remainders or hereditaments, shall from henceforth have, and be deemed and adjudged to have, only to him or them that have, or hereafter shall have, such use, confidence or trust, such estate, possession and seisin of and in the same lands, tenements, rents, reversions, remainders and other hereditaments, in like nature, manner, form, condition and course, as he or they had before, in the use, confidence or trust of the same lands, tenements, rents, reversions, remainders or hereditaments; saving and reserving to all and singular persons and bodies politic, their heirs and successors, other than the person or persons who be seised, or hereafter shall be seised of any lands, tenements or hereditaments, to any use, confidence or trust, all such right, title, entry, interest, possession, rents and action, as they, or any of them had, or might have had, before the making of this act; and saving and reserving also, to all and singular those persons, and to their heirs, who be, or hereafter shall be seised to any use, all such former right, title, entry, interest, possession, rents, customs, services and action, as they, or any of them, might have had, to his or their own proper use, in or to any manors, lands, tenements, rents or hereditaments, whereof they be, or hereafter shall be seised, to any other use, as if this act had never been made.

II. *And be it further enacted by the authority aforesaid,* That where any person or persons, stand and be seised, or hereafter shall stand and be seised of

and in any lands, tenements or hereditaments, in fee simple or otherwise, to the use or intent that some other person or persons shall have and perceive yearly to them, and to his or their heirs, one annual rent of ten pounds, or more or less, out of the same lands, tenements and hereditaments, and some other person or persons one other annual rent to him or them and their assigns, for term of life or years, or for some other special time, according to such intent and use as heretofore hath been, or hereafter shall be declared, limited and made thereof, in every such case, the same persons, their heirs and assigns, and every of them, who have such use and interest, to have and perceive any such annual rents, out of any lands, tenements or hereditaments, shall be adjudged and deemed to be in possession and seisin of the same rent, of and in such like estate as they had in the title, interest or use of the said rent or profit, and if a sufficient grant or other lawful conveyance had been made and executed to them, by such as were or shall be seised, to the use or intent of any such rent to be had, made or paid, according to the very trust and intent thereof; and that all and every such person and persons as have or hereafter shall have any title, use and interest, in or to any such rent or profit, shall lawfully distrain for non-payment of the said rent, and in their own names make avowries, or by their bailiffs or servants make cognizances and justifications, and have all other suits, entries and remedies for such rents, as if the same rents had been actually and really granted to them, with sufficient clauses of distress, re-entry or otherwise, according to such conditions, pains, or other things limited and appointed, upon the trust and intent, for payment or surety of such rent.

The cestui que use may take all advan- tages as his feoffees might have had. III. *And be it further enacted by the authority aforesaid,* That all and singular person and persons, and bodies politic, which have or shall have any estate unto them executed, of and in any lands, tenements or hereditaments, by the authority of this act, shall and may have and take the same or like advantage, benefit, voucher, aid-prayer, remedy, commodity, and profit, by action, entry, condition, or otherwise, to all intents, constructions and purposes as the person or persons seised to their use, of or in any such lands, tenements or hereditaments so executed, had, should, might, or ought to have had at the time of the execution of the estate thereof, by the authority of this act, against any other person or persons, of or for any waste, disseisin, trespass, condition broken, or any other offence, cause or thing, concerning or touching the said lands or tenements, so executed by the authority of this act.

Lands liable to execution upon judgments against cestui que use, &c. IV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for every sheriff, and other officer to whom any writ or precept is or shall be directed, at the suit of any person, or persons, of, for and upon any judgment or recognizance, made or had, or hereafter to be made or had, to do, make and deliver execution unto the party in that behalf suing, of all such lands, tenements, rents and hereditaments, as any other person or persons be, in any manner of wise seised or possessed, or hereafter shall be seised or possessed, to the use or in trust for him against whom execution is so sued, like as the sheriff or other officer might or ought to have done, if the said party against whom execution is or shall be so sued, had been seised of such lands, tenements, rents or other hereditaments, of such estate as he is or shall be seised of, in the use or trust, at the time of the said execution sued; and such lands, tenements, rents, and other hereditaments, by force and virtue of such execution, shall accordingly be held and enjoyed, freed, and discharged.

ed of all incumbrances of such person or persons as are or shall be so seised or possessed, to the use or in trust for the person against whom such execution is or shall be sued; and if any person intitled to, or having any such use or trust, hath devised, or shall devise the same, by his last will, or hath died, or shall die intestate leaving the same to descend to his heirs, the same shall be liable to the debts of the testator or intestate, and deemed and taken to be assessers in the hands of the heirs or devisees, who shall be chargeable for the same, in like manner as they are by law chargeable and liable in cases where lands or tenements descend, or are devised to them, and not otherwise.

V. *And be it further enacted by the authority aforesaid,* That every estate, feoffment, gift, release, grant, lease and confirmation of lands, tenements, rents, services or hereditaments, made or had, or hereafter to be made or had, by any person or persons, being of full age, of sound mind, at large, and not in dures, to any person or persons, and all recoveries and executions had or made, or to be had or made, shall be good and effectual to him, her or them, to whom it is so made, had or given, and to all others, to his, her or their use, against the seller, feoffor, donor or grantor thereof, and against the sellers, feoffors, donors or grantors, his; her and their heirs, claiming the same only as heir or heirs to the same sellers, feoffors, donors or grantors, and every of them, and against all others having or claiming any title or interest in the same, only to the use of the same seller, feoffor, donor or grantor, sellers, feoffors, donors or grantors, or his, her or their said heirs, at the time of the bargain, sale, covenant, gift or grant made.

C H A P. XXXVIII.

An ACT for settling Intestates Estates, proving Wills, and granting Administrations.

Passed 20th February, 1787.

I. *BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That administration of the goods, chattels and credits of any person dying intestate, shall be committed or granted to the widow, or next of kin of the intestate, or to some or one of them, if they, or any, or either of them will accept the same; and if neither of them will accept the same, then to such other proper person or persons as will accept the same; and such administrators shall have the benefit, and incur the charge of, and be accountable as executors.

II. *And be it further enacted by the authority aforesaid,* That just and equal distribution of what remaineth clear, of the goods and personal estate of any person dying intestate, after all debts, funeral charges, and just expences of every sort first allowed and deducted, shall be made amongst the wife and children, or childrens children, if any such there be, or otherwise to the next of kindred to the intestate, in equal degree, or legally representing their stocks, each according to his or her respective right, pursuant to the laws in such cases, and the rules and limitations hereinafter set down.

III. *And be it further enacted by the authority aforesaid,* That the whole surplusage of the goods and personal estate of every person dying intestate, shall be distributed in manner and form following; That is to say, One third part of the surplusage to the wife of the intestate, and all the residue, by equal portions, to and amongst

Distribution to be made among the next of kin to the intestate.

In what manner such distribution to be made.

the children of such persons dying intestate, and such persons as legally represent such children, in case any of the said children be then dead, other than such child or children who shall have any estate by settlement, or shall be advanced by the intestate, in his life time, by portion or portions equal to the share which shall, by such distribution, be allotted to the other children to whom such distribution is to be made; and in case any child shall have any estate, by settlement, from the said intestate, or shall be advanced by the said intestate in his life-time, by portion not equal to the share which will be due to the other children by such distribution as aforesaid, then so much of the surplusage of the estate of such intestate shall be distributed to such child or children as shall have any land by settlement from the intestate, or were advanced in the life-time of the intestate, as shall make the estate of all the said children to be equal, as near as can be estimated. And in case there be no children, nor any legal representatives of them, then one moiety of the said estate shall be allotted to the wife of the said intestate, and the residue of the said estate shall be distributed equally to every of the next of kindred of the intestate, who are in equal degree, and those who represent them; but no representation shall be admitted among collaterals, after brothers and sisters children. And in case there be no wife, then all the said estate to be distributed equally to and amongst the children; and in case there be no child, then to the next of kindred in equal degree of, or unto the intestate, and their legal representatives as aforesaid, and in no other manner whatsoever.

Where the estate of a child shall be divided between the mother, brothers and sisters.

this act, or any law,

This act not to extend to feme coverts dying intestate.

Surrogates to be appointed in each county &c.

IV. *And be it further enacted by the authority aforesaid,* That if after the death of a father, any of his children shall die intestate, without wife or children, in the life-time of the mother, every brother and sister, and the representatives of them, shall have an equal share with her; any thing in the contrary notwithstanding.

V. *And be it further enacted by the authority aforesaid,* That neither this act, nor any thing therein contained, respecting the distribution of intestates estates, shall be construed to extend to the estates of feme coverts that shall die intestate, but that their husbands may demand and have administration of their rights, credits and other personal estates, and recover and enjoy the same as fully as they might have done before the passing of this act.

VI. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the person administering the government of this state for the time being, by and with the advice and consent of the council of appointment, from time to time, and at all times, hereafter, to nominate and appoint, during the pleasure of the said council, and commissionate, under the great seal of this state, a surrogate in each and every county of this state, who shall be, and hereby are respectively authorized and empowered to take the proof of the last wills and testaments, and codicils, of all persons dying in the several counties, for which such surrogates shall be respectively appointed and commissioned, and to make and issue probates thereof, and to grant letters testamentary thereon, and to grant administrations, with the will annexed, in all cases where it may be necessary or proper, and to grant letters of administration of the goods, chattels, and credits of all persons dying intestate in the respective counties for which such surrogates shall be respectively appointed and commissioned. And if it so happen that any person who is or shall be an inhabitant in any part of this state, shall die while absent from home upon

journey or business, the will of such person, if he or she shall have made any, shall be proved before, and the probate thereof granted, or if such person shall die intestate, administration of his or her goods, chattels and credits, shall be granted, by the surrogate of the county where such person so dying was an inhabitant, as if such person had died at home. And further, That such letters testamentary and administrations shall be made in the name of the people of the state of New-York, and tested in the name of the surrogate who shall grant or issue the same, and be sealed with his seal of office; and all such probates, letters testamentary, and administrations, shall be as good, valid and effectual, to all intents and purposes, as if the same were made, granted and issued by the judge of the court of probates of this state; any law, usage or custom to the contrary notwithstanding.

VII. *And be it further enacted by the authority aforesaid,* That each of the said surrogates shall, at his own expence, cause a seal to be made for his office, with such device as they may respectively think proper, upon which seal shall be inscribed the name of the county for which it is to be used, and the words, Surrogate Seal, and shall deliver a description in writing of such seal to the secretary of this state, who shall deposit and record the same in his office, there to remain as a public record of this state.

VIII. *And be it further enacted by the authority aforesaid,* That each of the said surrogates shall record (in books to be provided for that purpose, at his own expence) all wills proved before him, together with the proof thereof, and all letters testamentary and administrations by him issued or granted, with all things concerning the same; which records shall be of the same force, validity and effect, as the like records in the office of the judge of the court of probates of this state. And further, That all wills proved before any such surrogate, shall, upon demand, after the same are copied by the surrogate, be returned to the person who delivered the same to such surrogate; or, in case of the death, insanity or removal of such person from this state, before the will shall be delivered to such person, then such will to be returned to any devisee named in such will, or to the heirs or assigns of such devisee; and in case of demand of such will from the surrogate, by such devisee, or the heirs or assigns of such devisee, on the suggestion of the death, insanity or removal from this state, of the person who delivered the will, the surrogate shall not be compelled to deliver such will, until the truth of the suggestion shall be proved to him, by the oath of a witness or witnesses, and which witnesses the surrogate is authorised and required to examine on oath, touching the truth of the suggestion.

IX. *And be it further enacted by the authority aforesaid,* That every surrogate so to be appointed and commissioned, shall, before he enters upon the execution of his office, take and subscribe the following oath, to-wit:

I, _____ surrogate of the county of _____ do solemnly and sincerely promise and swear, That I will in all things, well and faithfully execute the office of surrogate of the said county, according to the best of my knowledge and ability.

And further, That upon the death or removal from office of any such surrogate, the said seal, and all original wills, with all records, books and papers belonging to the said office, shall be delivered over to the successor in office, upon the oath of the preceding surrogate, or of his executors or administrators, in case of his death.

X. *And be it further enacted by the authority aforesaid,* That in all cases where a caveat shall be entered in the office of any such surrogate, or any objection be made against the proving of any will, or granting of administration of the goods, chattels and credits of any person, who is or shall be an inhabitant of the county for which such surrogate shall be appointed and commissioned, such surrogate shall cause the parties and witnesses to be cited to appear before him, and hear and determine the matter in controversy according to law, and grant and issue such probates, letters testamentary or administrations, as shall be agreeable to law and justice; saving to every one conceiving him, her or themselves aggrieved, his, her and their right of appeal to the judge of the court of probates of this state, so as such appeal be taken within fifteen days next after the order or sentence appealed from be made.

Judge of probates to prove wills, and grant administrations of persons dying out of the state, or who are not inhabitants. XI. *And be it further enacted by the authority aforesaid,* That in all cases of persons dying out of this state, or of persons dying within this state, not inhabitants of this state, their wills shall be proved before, and administrations of their personal estates, when necessary, be granted by, the judge of the court of probates of this state, in the manner heretofore used, and before or by no other person.

Bonds to be taken of persons to whom administration is granted. XII. *And be it further enacted by the authority aforesaid,* That the judge of the court of probates of this state, and the surrogates of each of the respective counties of this state, and every of them, for the time being, shall and may, upon their respective granting and committing of administration of the goods of persons dying intestate, take of the respective person or persons to whom such administration shall be committed, except where administration shall be granted to a husband, of the goods, chattels and credits of his wife, sufficient bonds, with two or more able sureties, to the people of the state of New-York, in such penalty as the said judge or surrogate shall think reasonable, respect being had to the value of the estate; with condition as follows, viz.

THE CONDITION of this obligation is such, That if the above bound administrator of all and singular the goods, chattels and credits of deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come to the hands, possession or knowledge of the said or into the hands or possession of any other person or persons for the said and the same so made, do exhibit, or cause to be exhibited (where such bond shall be taken by the judge of the court of probates) into the registry of the court of probates of this state (but where such bond shall be taken by a surrogate) into the office of the surrogate of the county of at or before the expiration of six calendar months from the date of the above written obligation, and the same goods, chattels and credits, and all other goods, chattels and credits of the said deceased, at the time of death, which at any time after shall come to the hands or possession of the said or into the hands or possession of any other person or persons for the said do well and truly administer according to law; and further, when thereunto lawfully required, do make, or cause to be made, a just and true account of administration; and all the rest and residue of the said goods, chattels and credits, which shall be found remaining upon the said administrator's account, the same being first examined and

allowed of by the judge of the court of probates of this state for the time being, shall deliver and pay unto such person or persons respectively, as the said judge by his decree or sentence, shall, pursuant to the true intent and meaning of the act, entitled, An act for settling intestates estates, proving wills and granting administrations, limit and appoint; and if it shall hereafter appear, that any last will and testament was made by the said deceased, and the executor or executors therein named, or any other person or persons, do exhibit the same, and request to have it allowed and approved; then if the said being thereunto required, do render and deliver the letters of administration granted on the estate of the said deceased, to the office from which the same were issued; then this obligation to be void and of no effect, or else to remain in full force and virtue.

Proceedings in case of forfeiture of the bond. Which bonds shall be good, to all intents and purposes, and pleadable in any courts of justice. And in case any such bonds shall become forfeited, it shall and may be lawful, for the judge of the court of probates of this state, to cause the same to be prosecuted in any court of record, at the request of any party grieved by such forfeiture; and the monies recovered upon such bond shall be applied towards making good the damages sustained by the not performing the said condition, in such manner as the said judge shall, by his sentence or decree, direct. And further, That it shall and may be lawful to and for the judge of the court of probates of this state, to call such administrators to account for and touching the goods, chattels and credits of any person dying intestate, and upon hearing and due consideration thereof, to order and make just and equal distribution of what remaineth clear, after debts, funeral charges and just expences of every sort, first allowed and deducted, according to the laws in such cases, and the rules and limitations in this act mentioned; and the same distributions to decree and settle, and to compel such administrators to observe and pay the same by due course of law; and also to hear and determine all causes touching any legacy or bequest in any last will and testament, payable or coming out of the personal estate of the testator, and to decree and compel payment thereof; saving to every one supposing him, her or themselves aggrieved, his, her and their right of appeal.

XIII. *And be it further enacted by the authority aforesaid,* That if any person or persons shall neglect or refuse to perform any such sentence or decree of the judge of the court of probates of this state, it shall and may be lawful to and for the judge of the said court for the time being, to cause such person or persons, by process directed to any sheriff of any county of this state, to be taken and imprisoned until he, she or they shall perform the same sentence or decree; and every sheriff is hereby directed to cause all such process to him at any time directed, to be duly executed, and to confine the persons against whom such process shall be issued, as in execution, until they shall be delivered by due course of law; and if any sheriff shall neglect his duty therein, he shall be answerable to the party grieved, in such manner as he would be answerable upon process of the like nature issuing out of the supreme court.

No distribution to be made until the expiration of one year. XIV. *And be it further enacted by the authority aforesaid,* That no distribution of the goods, chattels and credits of any person dying intestate, shall be made until after one year be fully expired after granting administration thereof; and that each and every one to whom any distribution and share shall be allotted, or any legacy or bequest paid or delivered, shall give bond, with sufficient sureties, to the

administrators or executors, that if any debt or debts truly owing by the intestate or testator, as the case may be, shall be afterwards sued for and recovered, or otherwise duly made to appear, and which there shall be no other assets to pay; that then, and in every such case, he or she shall, respectively, refund and pay back to the administrators or executors, his or her rateable part of such debt or debts, and of the costs of suit and charges by reason of such debt or debts, out of the part or share so allotted to him or her, or out of such legacy, thereby to enable the said administrators or executors to satisfy such debt or debts.

No administrator or executor to be cited to render an account, unless in behalf of a minor, or at the instance of a party interested.

XV. *And be it further enacted by the authority aforesaid,* That no administrator or executor shall be cited to the said court of probates, to render an account of the personal estate of his intestate or testator, otherwise than by an inventory or inventories thereof, unless it be at the instance or prosecution of some person or persons in behalf of a minor, or having a demand out of such personal estate, as a creditor, legatee, or next of kin, nor be compellable to account before the said court, otherwise than as is aforesaid; any thing in this act, or any law, usage or custom to the contrary notwithstanding.

Where administration is granted with the will annexed, the will to be observed.

XVI. *And be it further enacted by the authority aforesaid,* That in all cases where any administration shall be granted, with a will or testament annexed, either by the judge of the court of probates of this state, or by any surrogate of any county of this state, the will of the deceased in such testament expressed, shall be observed and performed. And further, That all former proceedings according to the provisions of such laws as were in force before the passing of this act, and all rights and claims agreeable to the provisions of this act, shall be, and hereby are confirmed.

[The 17th section of this act is repealed, 12th sess. ch. 25. sec. 8.]

If goods of the testator or intestate do not exceed 15l. no fees to be allowed.

XVIII. *And be it further enacted by the authority aforesaid,* That wherever it shall appear to the surrogate, by the oath of the person applying for letters testamentary or letters of administration, that the goods, chattels and credits of the testator or intestate, do not exceed in value the sum of fifteen pounds, no fees shall be exacted by or paid to the surrogate, on granting letters testamentary, or letters of administration, of the goods, chattels and credits of such testator or intestate; any thing herein before contained to the contrary thereof in any wise notwithstanding.

XIX. *And be it further enacted by the authority aforesaid,* That the several acts of the legislature of the late colony of New-York, For the supervising intestates estates, and regulating the probate of wills, and granting letters of administration, and for extending the same to several counties; and, For the better settling of intestates estates, shall be, and hereby are repealed.

XX. *And be it further enacted by the authority aforesaid,* That the courts of the said surrogates, and the said court of probates, in the matters submitted to their cognizance respectively by this act, shall proceed according to the course of the courts having by the common law jurisdiction of the like matters: Provided, That the same shall not be construed to extend to the inflicting any ecclesiastical pains or penalties whatsoever.

Judge of probates to exercise former powers until the first of May, 1787.

XXI. *Provided always, and be it further enacted by the authority aforesaid,* That it shall and may be lawful for the judge of the court of probates, and the surrogates in the several counties within this state, to continue to exercise the like powers they were respectively vested with immediately before the passing of this act, until the first day of May next.

C H A P. XXXIX.

An ACT for the better securing the Liberty of the Citizens of this State, and for prevention of Imprisonments.

Passed 21st February, 1787.

WHEREAS great delays have been used by sheriffs, gaolers and other officers, to whose custody persons have been committed for criminal, or supposed criminal matters, in making return of writs of habeas corpus to them directed, and by other shifts to avoid their yielding obedience to such writs, contrary to their duty and the known laws of the land, whereby many persons have been, and hereafter may be long detained in prison, in such cases where by law they are bailable, to their great charges and vexation; For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal, or supposed criminal matters:

I. *Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That

Sheriffs, gaolers and others to return writs of habeas corpus within a certain time.

whenever any person or persons shall bring any habeas corpus directed to any sheriff, gaoler, minister or other person or persons whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or other person or persons, or left at the gaol or prison, with any of the under officers, under keepers, or deputy of the said officers or keepers, that the said officer or officers, his or their under officers, under keepers, or deputies, or other person or persons, shall, within three days after the service thereof as aforesaid (unless the commitment aforesaid were for treason or felony, plainly and specially expressed in the warrant of commitment) upon payment or tender of charges of bringing the said prisoner, to be ascertained by the judge or court that awarded the same, and indorsed upon the said writ, not exceeding twelve pence per mile, and upon security given, by his own bond, to pay the charges of carrying back the prisoner, if he shall be remanded by the court or judge, to which he shall be brought, according to the true intent of this act, and that he will not make any escape by the way, make return of such writ, and bring or cause to be brought the body of the party so committed or restrained, unto or before the chancellor of this state for the time being, or the justices of the supreme court, or unto or before such of them before whom the said writ is made returnable, according to the command thereof, and shall then likewise certify the true causes of his detainer or imprisonment, unless the commitment of the said party be in a place beyond the distance of twenty miles from the place or places where such court, or person is or shall be residing; and if beyond the distance of twenty miles and not above one hundred miles, then within the space of ten days; and if beyond the distance of one hundred miles, then within the space of twenty days after such delivery as aforesaid, and not longer.

II. And to the intent that no sheriff, gaoler, or other officer may pretend ignorance of the import of any such writ; *Be it further enacted by the au-*

Authority aforesaid, That all such writs shall be marked in this manner, "By the statute," and be signed by the person that awards the same; and if any person or persons shall be or stand committed or detained as aforesaid, for any crime, unless for treason or felony plainly expressed in the warrant of commitment, in the vacation time, and out of term, it shall and may be lawful to and for the person or persons so committed or detained (other than persons convict, or in execution by legal process) or any one on his or their behalf, to apply or complain to the chancellor, or any one of the justices of the supreme court; and the said chancellor or justices, or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise, upon oath made that such copy or copies were denied to be given by such person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required, upon request made in writing by such person or persons, or any on his, her or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant an habeas corpus, under the seal of such court whereof he shall then be one of the judges, to be directed to the officer or officers, or person or persons in whose custody the party so committed or detained shall be, returnable immediately before the said chancellor or justice of the said supreme court; and upon service thereof as aforesaid, the officer or officers, his or their under officer or under officers, under keeper or under keepers, or their deputy, or person or persons in whose custody the party is so committed or detained, shall, within the times respectively before limited, bring such prisoner or prisoners before the said chancellor, or justices of the said supreme court, or one of them, before whom the said writ is made returnable; and in case of his absence, before any other of them, with the return of such writ, and the true causes of the commitment and detainer, and thereupon, within two days after the party shall be brought before them, the said chancellor, or such justice before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties, in any sum according to their discretions, having regard to the quality of the prisoner and nature of the offence, for his or their appearance in the supreme court the term following, or at the next general sessions or gaol delivery of and for such county, city or place, where the commitment was, or where the offence was committed, or in such other court where the said offence is properly cognizable, as the case shall require, and shall then certify the said writ, with the return thereof, and the said recognizance or recognizances, into the said court where such appearance is to be made, unless it shall appear unto the said chancellor, or justice or justices, that the party so committed, is detained upon a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices, or some justice or justices of the peace, for such matters or offences, for the which, by

If a prisoner neglects applying for two terms, no habeas corpus to be granted in the vacation.

the law, the prisoner is not bailable. But if any person shall have wilfully neglected, by the space of two whole terms after his imprisonment, to pray a habeas corpus for his enlargement, such person so wilfully neglecting, shall not have any habeas corpus to be granted in vacation time, in pursuance of this act.

III. *And be it further enacted by the authority aforesaid*, That if any officer or officers, his or their under officer or under officers, under keeper or under

keepers, or deputy, or other person or persons, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisoner or prisoners, according to the command of the said writ, within the respective times aforesaid, or upon demand made by the prisoner, or any person in his behalf, shall refuse to deliver, or within the space of six hours after demand, shall not deliver to the person so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he and they are hereby required to deliver accordingly, all and every the head gaolers and keepers of such prisons, and such other person or persons in whose custody the prisoner shall be detained, shall, for the first offence, forfeit to the prisoner or party grieved, the sum of one hundred pounds, and for the second offence, the sum of two hundred pounds, and shall, if an officer, be, and is hereby made incapable to hold or execute his said office; the said penalties to be recovered by the prisoner or party grieved, his or her executors or administrators, against such offender, his executors or administrators, by action of debt, suit, bill, plaint or information, in any court of record, wherein no privilege, injunction or stay of prosecution by non vult ulterius prosequi, or otherwise, shall be admitted or allowed, or any more than one imparlance; and any recovery or judgment, at the suit of any party grieved, shall be a sufficient conviction for the first offence; and any after recovery or judgment, at a suit of a party grieved, for any offence, after the first judgment, shall be a sufficient conviction to bring the officers, or person or persons, within the said penalty for the second offence.

No person set at large upon such writ, to be committed again for the same offence, but by a proper court, shall be delivered or set at large upon any habeas corpus, shall, at any time thereafter, be again imprisoned or committed for the same offence, by any person or persons whatsoever, other than by the legal order and process of such court wherein he or they shall be bound by recognizance to appear, or other court having jurisdiction of the cause; and if any other person or persons shall knowingly, contrary to this act, recommit or imprison, or knowingly cause or procure to be recommitted or imprisoned, for the same offence or pretended offence, any person or persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved, the sum of five hundred pounds; any colourable pretence of variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

IV. And for prevention of unjust vexation by reiterated commitments for the same offence; *Be it further enacted by the authority aforesaid,* That no person or persons who shall be delivered or set at large upon any habeas corpus, shall, at any time thereafter, be again imprisoned or committed for the same offence, by any person or persons whatsoever, other than by the legal order and process of such court wherein he or they shall be bound by recognizance to appear, or other court having jurisdiction of the cause; and if any other person or persons shall knowingly, contrary to this act, recommit or imprison, or knowingly cause or procure to be recommitted or imprisoned, for the same offence or pretended offence, any person or persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved, the sum of five hundred pounds; any colourable pretence of variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

V. *And be it further enacted by the authority aforesaid,* That if any person or persons shall be committed for any treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court, the first week of the term, or first day of the sessions of oyer and terminer or gaol delivery, to be brought to his trial, shall not be indicted some time in the next term, sessions of oyer and terminer or gaol delivery, after such commitment, it shall and may be lawful to and for the justices of the supreme court and justices of oyer and terminer, or gaol delivery, and they are hereby required, upon motion to them made in open court, the last day of the term, sessions or gaol delivery, either by the prisoner or any one in his behalf, to set at liberty the prisoner upon bail, unless it appear to the justices, upon oath made, that the witnesses against the prisoner could not be produced the same term, sessions or gaol delivery. And if any per-

son or persons, committed as aforesaid, upon his prayer or petition in open court, the first week of the term, or first day of the sessions of oyer and terminer or gaol delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of oyer and terminer, or gaol delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment. Provided always, That nothing in this act shall extend to discharge out of prison any person charged in debt or other action, or with process in any civil cause, but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody according to the law for such other suit.

Criminals not to be removed but by ha. VI. And be it further enacted by the authority aforesaid, That if any person or persons, citizens of this state, shall be
beas corpus or other committed to any prison, or in custody of any officer or
process. officers whatsoever, for any criminal or supposed criminal

matter, that the said person shall not be removed from the said prison and custody, into the custody of any other officer or officers, unless it be by habeas corpus, or some other legal writ or process, or where the prisoner is delivered to the constable or other inferior officer, to carry such prisoner to some common gaol, or where any person is sent, by order of any court or judge, or justice of the peace, to any common work-house, or house of correction, or where the prisoner is removed from one prison or place to another within the same county, in order to his or her trial or discharge, in

Except in cases of due course of law; or in case of sudden fire or infection, or other necessity; and if any person or persons shall after
fire, infection or oth. such commitment aforesaid, make out and sign, or coun-
er necessity. ter sign any warrant or warrants, for such removal aforesaid,

Persons making a. any warrant contrary to this act to forfeit
200l.

contrary to this act, as well he who makes or signs, or counter signs such warrant or warrants, as the officer or officers who obey or execute the same, shall, for every offence, forfeit to the prisoner or party grieved, two hundred pounds, to be recovered in manner aforesaid, by the party grieved.

Prisoners may obtain writs of habeas corpus from the chancery or sup. court;

And the chancellor or justice denying such writ, to forfeit
500l.

VII. And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any prisoner and prisoners as aforesaid, to move for and obtain his or their habeas corpus, as well out of the court of chancery as out of the supreme court; and if the chancellor, or any justice of the supreme court for the time being, in the vacation time, upon view of the copy or copies of the warrant or warrants of commitment or detainer, or upon oath made that such copy or copies were denied as aforesaid, shall deny any writ of habeas corpus by this act required to be granted, being moved for as aforesaid, they shall severally forfeit to the prisoner or party grieved, the sum of five hundred pounds, to be recovered in manner aforesaid.

VIII. And for preventing illegal imprisonments of the citizens of this state, in prisons out of this state; Be it further enacted by the authority aforesaid,

No citizen to be sent prisoner out of this state, for any offence committed within the state.

That no citizen of this state, who now is or hereafter shall be an inhabitant or resident within this state, shall or may be sent prisoner to any place whatsoever, out of this state, for any crime or offence committed within this state, and that every such imprisonment is hereby enacted and adjudged to be illegal; and that if any of the said citizens now is, or hereafter shall be so imprisoned, every such person and persons so imprisoned, shall and may, for

Persons so imprisoned to recover treble costs, besides damages not less than goal.

every such imprisonment, maintain, by virtue of this act, an action or actions of false imprisonment in any court of record, against the person or persons by whom he or she shall be so committed, detained, imprisoned, sent prisoner or transported, contrary to the true intent and meaning of this act, and against all or any person or persons who shall frame, contrive, write, seal, sign or countersign, any warrant or writing for such commitment, detainer, imprisonment or transportation, or shall be advising, aiding or assisting in the same, or any of them; and the plaintiff in every such action shall have judgment to recover treble costs, besides damages, which damages so to be given shall not be less than five hundred pounds; in which action no delay, stay or stop of proceeding, by rule, order or command, nor no injunction or privilege whatsoever, nor any more than one imparlance, shall be allowed, excepting such rule of the court wherein the action shall depend, made in open court, as shall be thought, in justice, necessary, for special cause to be expressed in the said rule. And the person or persons, who shall knowingly frame, contrive, write, seal, sign, or countersign, any warrant for such commitment, detainer or transportation, or shall so commit, detain, imprison or transport, any person or persons contrary to this act, or be any wise advising, aiding or assisting therein, being lawfully convicted thereof, shall be disabled from thenceforth to bear any office of trust or profit within this state, and shall forfeit to the people of this state, all his goods and chattels, and the issues and profits of his lands and tenements during his natural life. Provided always, That nothing in this act shall extend to give benefit to any person who shall, by contract in writing, agree with any merchant or owner of any plantation, or other person whatsoever, to be transported to any place out of this state, or to any part beyond the seas, and receive earnest upon such agreement, although that afterwards such person shall renounce such contract. Provided also, That if any person or persons lawfully convicted of any felony, shall, in open court, pray to be transported beyond the seas, and the court shall think fit to leave him or them in prison for that purpose, such person or persons may be transported into any parts beyond the seas; this act, or any thing therein contained, to the contrary notwithstanding.

But any person residing in this state, and charged with felony, or other high misdemeanor, in any other of the United States, may be sent there for trial.

Provided also, That if any person or persons, at any time resident in this state, shall have committed, or be charged with having committed, any treason, felony or other high misdemeanor, in any other of the United States of America, where he or she ought to be tried for such offence, such person or persons may be sent to such place, there to receive such trial, in such manner as the same might have been used before the making of this act; any thing herein contained to the contrary notwithstanding.

IX. *Provided also, and be it further enacted by the authority aforesaid,* That no person or persons shall be sued, impleaded, molested or troubled, for any offence against this act, unless the party offending be sued or impleaded for the same, within two years at most after such time wherein the offence shall be committed, in case the party grieved shall not then be in prison; and if he or she shall be in prison, then within the space of two years after the decease of the person imprisoned, or his or her delivery out of prison, which shall first happen.

X. *And be it further enacted by the authority aforesaid,* That if any information, suit or action, shall be brought or exhibited against any person or

persons, for any offence committed, or to be committed against the form of this law, it shall be lawful for such defendants to plead the general issue, that they are not guilty, or that they owe nothing, and to give such special matter in evidence to the jury that shall try the same; which matter being pleaded, had been good and sufficient matter in law, to have discharged the said defendant or defendants against the said information, suit or action; and the said matter shall be then as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth, or alledged the same matter, in bar or discharge of such information, suit or action.

XI. And to the intent that no person may avoid his trial at the sessions of oyer and terminer, or gaol delivery, by procuring his removal before the sitting of the same court, at such time as he cannot be brought back to receive his trial there; *Be it further enacted by the authority aforesaid,* That after the

No person to be removed by habeas corpus, after sessions of oyer and terminer is proclaimed for that county, but shall be carried to the circuit court.

sessions of oyer and terminer, or gaol delivery, proclaimed for that county where the prisoner is detained, no person shall be removed from the common gaol upon any habeas corpus granted in pursuance of this act; but upon any such habeas corpus, shall be brought before the justice or justices of the circuit court, in open court, who is or are thereupon to do what to justice shall appertain. Provided, That after the sessions of oyer and terminer, or gaol delivery, are ended, any person or persons detained may have his or their habeas corpus, according to the direction and intention of this act.

XII. And because oftentimes persons charged with felony, or as accessaries thereunto, are committed upon suspicion only, whereupon they are bailable, or not, according as the circumstances making out that suspicion, are more or less weighty, which are best known to the justices of the peace who committed the persons, and have the examinations before them, or to other justices of the peace in the county: Therefore, *Be it further enacted by the authority aforesaid,* That where any person shall appear to be committed by any judge or justice of the peace, and charged as accessory before the fact, to any felony, or upon suspicion thereof, or with suspicion of any felony, which felony shall be plainly and specially charged in the warrant of commitment, that such persons shall not be removed or bailed by virtue of this act, or in any other manner than they might have been before the making of this act.

C H A P. XLII.

An ACT to regulate the Election of Charter Officers in the City of New-York.

Passed 23d February, 1787.

L *BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That the mayor, aldermen and commonalty of the city of New-York, in common council convened, shall and may, on such day in the month of September, in every year hereafter, as to them shall seem meet, at least eight days before the day of election of officers, to be chosen in and for the said city, by virtue of the charter thereof, fix upon a proper place in each respective ward, where such election shall be held, and nominate and appoint a fit and discreet person for each respective ward in the said city, being a resident

in the ward for which he shall be so appointed, and a freeholder there, or a freeman of the said city, to preside at, and be the inspector or returning officer, as well of the election of the said officers to be chosen in the month of September, for the year next ensuing, to see that the same respective elections be fairly conducted and had, as for the election of such officers respectively, as shall be to be chosen in the same year, to fill any vacancy or vacancies which, from time to time, shall or may happen in any of the said offices, by death, removal out of the said city, refusal to serve, or otherwise. And further, That in case any of the said inspectors shall die, remove out of the said city, refuse to serve, or be rendered incapable of attending any of the said elections, before or on the day on which the same is to be held; that then, and in such case, it shall and may be lawful to and for the said mayor, aldermen and commonalty of the city of New-York, in common council convened, or the major part of them, to appoint another fit and discreet person, being a resident in the ward in which such election shall be to be held, and a freeholder there, or a freeman of the said city, to be an inspector of the said election, in the room and stead of the said person so dying, removing, refusing to serve, or being rendered incapable of attending the said election, and so as often as such case shall happen. And further, That each of the said persons so to be, from time to time, nominated and appointed to be inspectors of the said respective elections, shall appoint a person properly qualified, to act as clerk at the election to be held in their respective wards, and shall tender and administer to such clerk (who is hereby directed and required to take the same) the following oath, to wit :

I do solemnly and sincerely swear and declare, in the presence of Almighty God, That I will truly and impartially execute the trust reposed in me, as a clerk of this election, for the ward of the city of New-York.

And shall thereupon, in the presence of the said inspector, in a poll-book to be provided for the purpose, set down the name of each voter, and for whom he shall vote, and whether he votes as a freeholder or freeman; which said poll-book shall, immediately after the closing of the poll of every of the said elections, be subscribed with the proper name and hand-writing of such inspector, and be by him delivered to the clerk of the said city, or his deputy, to be by him delivered to the said mayor, aldermen and commonalty of the city of New-York, in common council convened. And further, That the respective clerks of the said elections, shall be allowed the sum of sixteen shillings for each election, to be paid by the said mayor, aldermen and commonalty of the city of New-York.

In case of the death, &c. of an alderman, &c. how others to be chosen. II. *And be it further enacted by the authority aforesaid,* That in case it shall so happen, that any of the aldermen, assistants, assessors, collectors or constables so chosen, shall

die, or remove out of the said city, before the day by the said charter appointed for the annual election of such officers, or, being duly elected, shall refuse to serve in the office to which he or they shall respectively be chosen; then, and in such case, it shall and may be lawful to and for the said mayor, aldermen and commonalty of the city of New-York, in common council convened, to order an election or elections to be held, to fill such vacancy or vacancies, and appoint a place in the respective wards, and the time (not less than five days previous to such intended election) for holding the said election, and to give notice thereof to the inspector of the ward in which such vacancy shall happen, and so as often as any such vacancy

shall happen ; and that the said inspector shall forthwith cause the same to be published, by advertisements put up in at least three of the most public places of the ward.

III. *And be it further enacted by the authority aforesaid,*
 Penalty on inspect- That if any person who shall be nominated and appointed
 ers refusing to serve. as an inspector as aforesaid, shall neglect or refuse to execute the said office, every such person shall forfeit and pay, for every such neglect or refusal, to the use of the corporation of the said city, the sum of twenty pounds, to be levied by warrant under the seal of the said city, signed by the mayor or recorder for the time being.

IV. *And be it further enacted by the authority aforesaid,*
 If no inspector be That in case the said mayor, aldermen and commonality of
 appointed, or if the the city of New-York, in common council convened,
 inspector does not at- shall neglect to appoint such persons as inspectors of the
 tend, then the elect- election for any of the officers aforesaid, or if the persons
 ion to be held accord- so to be nominated and appointed, or any of them, shall not
 ing to the charter. attend or do the duty of their said office, at any election in any ward of the said city, that then the said election of the said officers, or such of them as shall then be to be chosen, in such respective ward, shall be had and made, according to the directions in the charters granted to the said city ; any thing in this act contained to the contrary hereof in any wise notwithstanding.

V. *And be it further enacted by the authority aforesaid,*
 Who are not to vote That no person shall vote at any of the said elections, as a
 as freeholders, &c. freeholder, but such as shall be possessed of a freehold estate in his own right, or in the right of his wife, in lands or tenements to the value of twenty pounds, over and above all debts charged thereon, within such ward of the said city where he shall vote, and shall have possessed the same one month, at the least, before the day of such election, unless he shall hold his estate by descent or devise. And further, That no person shall vote at any of the said elections, as a freeman of the said city, unless he shall have been admitted to the freedom of the said city three months, at the least, before the day of such election, and shall have actually resided in the ward in which he shall so vote, for one month before the day of such election. And further, That every elector, before he shall be admitted to poll at the said election, shall, if required by the inspector of such election, first take the following oath, which oath each of such inspectors is hereby authorised to tender and administer ; That is to say, If the said elector votes as a freeholder, the oath following, to wit :

I do solemnly and sincerely swear and declare, in the presence of Almighty God, that I am, and (if he shall not hold his estate by descent or devise) have been for one month next and immediately preceding this election, a freeholder, and possessed of a freehold in my own right (or, in my wife's right, as the case may be) of the value of twenty pounds, in the ward in which I now offer to vote ; that I do not hold the same in trust for any body politic or corporate, or for any pious or religious use whatsoever ; that I have not been before polled at this election, and that I have not procured this freehold under any obligation or promise to re-convey the same to the seller after this election.

And if the said elector shall vote as a freeman, the following oath, to wit :

I do solemnly and sincerely swear and declare, in the presence of Almighty God, That I am, and have been for three months

next and immediately preceding this election, a freeman of the city of New-York, and have actually resided in the ward in which I now offer to vote, one month now last past, and that I have not been before polled at this election.

VI. *And be it further enacted by the authority aforesaid,* That if any freeholder or freeman shall refuse or neglect to take the oath by this act appointed to be taken by him or them respectively; or if any elector shall refuse or neglect to declare whether he votes in the right of a freeholder or freeman (being thereunto respectively required by the inspector) then, and in such case, the poll or vote of such person or persons so neglecting or refusing, shall be, and the same is hereby declared to be null and void, and as such shall be rejected and disallowed; any charter, law, usage or custom to the contrary hereof in any wise notwithstanding.

VII. *And be it further enacted by the authority aforesaid,* That every mortgagor, while he continues in the occupation of the premises mortgaged, and every mortgagee of a real estate, to him and his heirs, after he obtains possession of the mortgaged premises, and every person possessed of a freehold in right of his wife, shall be deemed and esteemed a freeholder within the meaning of this act: But that no person or persons holding lands, tenements or hereditaments, in trust for any body politic or corporate, or for any religious or pious use or purpose, in virtue of such trust, nor any person under the age of twenty-one years, shall be qualified to vote for any of the officers aforesaid, which shall hereafter be to be chosen, in and for the said city.

VIII. *And be it further enacted by the authority aforesaid,* That every person seized of a freehold estate, of and in any houses or lots of ground of value sufficient by this act to entitle him to a vote, lying and being on the east side of, and fronting to the broad-way in the said city of New-York, shall vote for the officers aforesaid in the west ward only, and not in the north ward of the said city, although their lots of ground fronting the said broad-way, shall extend in the same north ward; any charter, law, usage or custom to the contrary hereof in any wise notwithstanding.

C H A P. XLIII.

An ACT concerning Fines and Recoveries of Lands and Tenements.

Passed 26th February, 1787.

I. *BE it enacted by the people of the State of New-York, represented in Senate and assembly, and it is hereby enacted by the authority of the same,* That all fines of lands and tenements shall be levied in the supreme court, before the justices of the same court, and not elsewhere; and that when the original writ is returned and delivered to the court, a pleader, in the presence of the parties before the justices, shall say to the court, "We pray leave to agree," and one of the justices shall say, "Leave is granted by the court;" and when the parties have made their agreement, proclamation shall be made, that all persons keep silence while the agreement between the parties is read; and the pleader shall then read the concord between the parties in open court, and then deliver the same into court, where the cognizors shall acknowledge and sign the same, in the presence of the justices. And it is to be known,

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that the order of the law will not suffer a final accord to be levied, without an original writ, and that must be in the supreme court, before two justices of the same court at the least, and in the presence of the parties named in the writ, who must be of full age, of sound memory, and out of prison; and if a woman covert be one of the parties, she must be first examined by one of the said justices; and if she doth not assent thereunto, the fine shall not be levied. And the cause whereof such solemnity ought to be observed in a fine, is because a fine is so high a bar, of so great force, and of so strong a nature in itself, that it concludeth not only such as be parties and privies thereto, and their heirs, but all other people of the world, being of full age, not covert of baron within this state, out of prison, and of sound memory, the day of the fine levied, if they make not their entry, and bring their action within five years after the fine levied.

II. *And be it further enacted by the authority aforesaid,* That nothing shall be taken or paid for any writ or writs of covenant for levying of any fines, but the accustomed fees for writing, and for the seal of the same writ or writs; and that all duties and impositions heretofore demanded and taken upon levying of fines, for the alienation or licence to agree, under the names of fines, post fines, and the king's silver, shall be, and hereby are, forever abolished.

III. *And be it further enacted by the authority aforesaid,* That as well the parties demandant or plaintiff, as the tenants or defendants, that will yield or acknowledge their right of lands or tenements, unto others in pleas of warrantia chartæ, covenant or other pleas, whereupon fines are to be or may be levied, shall, before such fines do pass, appear personally in the said supreme court, so that their age, idiocy or any other default (if any be) may be adjudged and discerned by the justices; but if any person or persons willing to levy such fine or fines, shall be out of this state, or cannot by reason of age, sickness or other reasonable impediment, come in person before the justices in the said supreme court, to acknowledge the same fine or fines, then and in every such case, a writ or writs of dedimus potestatem may be granted out of the court of chancery to the justices of the supreme court, giving power to them, or any one or more of them, or to any other proper and discreet men, of good fame and credit, residing at or near the place where such party being out of this state, or so diseased or unable to travel, shall be, giving power to them, or any two or more of them to go to the party being out of this state, or so diseased or unable to travel, and to receive his, her or their acknowledgment or cognizance, upon that plea or form of plea, that he, she or they have or hath, whereupon the same fine or fines ought to be levied, and the said justice or justices, or other persons so empowered, shall certify the justices of the supreme court thereof by the record, so that all things incident to the same fine or fines, being examined by him or them, the same fine or fines may be lawfully levied. And it shall and may be lawful for the chief justice of the supreme court for the time being, to receive such acknowledgments or cognizances as aforesaid, by virtue of his office, and without any such commission as aforesaid. And further, That no person to whom any such fine shall be acknowledged, shall be allowed to appear in the said supreme court by attorney, unless such attorney shall be appointed by the person for whom he shall appear, before one of the justices of the supreme court, or commissioners authorised by a writ of dedimus potestatem out of the chancery, his or her attorney, to gain or lose in the plea, whereupon such fine is to be levied, and his warrant of attorney be signed by such justice or commissioners,

IV. *And be it further enacted by the authority aforesaid,* That every person who shall at any time hereafter take the acknowledgment or cognizance of any fine, or any warrant of attorney of any demandant or plaintiff, in any plea whereupon any fine or fines shall be levied, or of any demandant or plaintiff or tenant or vouchee for suffering any common recovery, or shall certify them, or any of them, shall, with the certificate of the concord or warrant of attorney, certify also the day and year when the same was acknowledged; and that no person who shall take such acknowledgment or cognizance of any fine, or any warrant of attorney for any of the purposes aforesaid, shall be bound, or by any means enforced to certify any such acknowledgment, or cognizance, or warrant, except it be within one year next after the same shall be taken. And further, That no attornment in or upon any fine, be entered upon record, unless the party mentioned to attorn therein, shall have first appeared in court in person, or by attorney, warranted by the hand of one of the justices of the supreme court, or commissioners as aforesaid, upon a writ of, quid juris clamat, quem redditum reddat, or per quæ servitia, as the case may require; and every entry of attornment hereafter to be made, where there shall be no appearance as aforesaid, shall be utterly, void and of none effect, without any writ of error, or other means to be used for the avoiding thereof.

V. *And be it further enacted by the authority aforesaid,* That after the engrossing of every fine hereafter to be levied in the said supreme court, before the justices of the same court, of any lands, tenements, or other hereditaments, the same fines shall be openly and solemnly read and proclaimed in the same court, four times; that is to say, Once in the same term wherein it is engrossed, and once in every of the three terms holden next after the same engrossing, and in the same time that it is so read and proclaimed, all pleas shall cease; and the said proclamations being so had and made, the fine shall be a final end, and conclude as well privies as strangers to the same, except women covert not parties to the same fine, and every person then being within the age of twenty-one years, in prison, or out of this state, or not of sound mind at the time of the said fine levied, not parties to such fine; saving to every person and persons, and to their heirs, other than the parties to the said fine, such right, claim, and interest, as they have to or in the said lands, tenements, or other hereditaments, at the time of such fine engrossed, so that they pursue their title, claim or interest, by way of action or lawful entry, within five years next after the said proclamations had and made; and saving also to all persons, such action, right, title, claim and interest, in or to the said lands, tenements or other hereditaments, as first shall grow, remain, descend or come to them, after the said fine engrossed, and proclamation made, by force of any gift, or by any other cause or matter had and made before the said fine levied, so that they take their action, or pursue their said right or title according to law, within five years next after such action, right, claim, title or interest to them accrued, descended, fallen or come, and that they and their heirs may have their said action against the person of the profits of the said lands, tenements and other hereditaments, at the time of the said action to be taken; and if the same persons at the time of such action, right and title accrued, descended, remained or come unto them, be covert of baron, or within age, or in prison, or out of this state, or not of sound mind, then their action, right and title, to be reserved and saved to them, and to their heirs, unto the time that they come and be at their full age of twenty-one years, out of prison, within this state, discover and of sound

mind, so that they or their heirs take and pursue, according to law, their said actions or their lawful entry, according to their right and title, within five years next after they come and be at their full age, out of prison, within this state, discoverd and of sound mind. And further, That all such persons as be covert of baron, and not party to the fine, and every person being within the age of twenty-one years, or in prison, or out of this state, or not of sound mind at the time of the said fine levied and engrossed, and by this act before excepted, having any right or title, or cause of action, to any of the said lands, tenements or other hereditaments, that they or their heirs inheritable to the same, take their said actions or lawful entry, according to their right and title, within five years next after they come and be of the age of twenty-one years, out of prison, within this state, discoverd and of sound mind, and the same actions sue, or their lawful entry take and pursue, according to law; and if they do not take their actions and entry as is aforesaid, they and every of them, and their heirs, and the heirs of every of them, shall be concluded by the said fine forever, in like form as they be that be parties or privies to the said fine; saving to every person and persons not party nor privy to the said fine, their exception to avoid the same fine, for that those who were parties to the said fine, had nothing, nor either of them, nor any person or persons to their use, nor to the use of either of them, had any thing in the lands and tenements comprised in the said fine, at the time of the said fine levied.

VI. *And be it further enacted by the authority aforesaid,* That no entry to be made upon any lands, tenements, or hereditaments, shall be of any force or effect to avoid any fine levied, or to be levied, with proclamations in the said supreme court, unless upon such entry, an action shall be commenced within one year after making such entry, and prosecuted with effect.

VII. *And be it further enacted by the authority aforesaid,* That every writ of covenant, and other writ, whereupon any fine shall hereafter be levied, with the return thereof, the writ of dedimus potestatem, for taking the acknowledgment or cognizance of any of the same fines, with the return thereof, the concord, note, and foot of every such fine, the proclamations thereupon, and the licence to agree, and also every original writ of entry in the post, or other writ, whereupon any common recovery shall hereafter be suffered or passed, with the returns of the same writs, and the writs of summons ad warrantizandum, with the returns thereof, and every warrant of attorney, as well of every demandant and tenant, as vouchee, shall and may be inrolled in rolls of parchment, to be of record forever, and to remain in the safe custody of the clerk of the supreme court, and his successors. And that the said inrollments shall be of as good force and validity in law, to all intents and purposes, as the same writs, concords, notes, feet, and warrants of attorney ought to be by law. And further, That the original writ whereupon any fine shall be levied, with the return thereof, the warrants of attorney, if there be any, taken before any or either of the justices of the supreme court, the licence to agree, and concord of every fine, shall be inrolled upon one and the same roll; and the writs of dedimus potestatem, if there be any, with the returns thereof, and the note and foot of the same fine shall be inrolled upon separate rolls.

VIII. *And for the more easy discovery of fines, and the security of purchasers; Be it further enacted by the authority aforesaid,* That the counterpart of the foot of every fine hereafter to be levied, which is to be delivered to the party, shall be signed by one of the judges of the said supreme court, and by

the clerk of the said court, and shall be recorded by the clerk of the city or county where the lands or tenements comprised in the same fine shall be situated, in a book to be by him kept for that purpose, within one year next after the engrossing of the same fine, at the expence of the party to whom the same shall be levied. And that the respective clerks of every city and county of this state for the time being shall, without fee or reward, immediately after recording the same, make and write, or cause to be made or written, a table or note, wherein shall be contained the contents of the same fine, so recorded in their respective offices; that is to say, The names of the parties, and description of the lands and tenements comprised in such fine, and the time of levying the same; and shall, on the first day of the next general sessions of the peace for the same city or county, affix the same on the principal door of the court-house of the same city or county, and see that the same continue there during the same sessions, upon pain that every clerk offending therein, shall forfeit the sum of ten pounds; one moiety thereof to the people of this state, and the other moiety to him or them who will sue for the same in any court of record, by action of debt, bill, plaint or information.

IX. *And be it further enacted by the authority aforesaid,* That no fines, proclamations upon fines, or common recovery, heretofore had, levied, suffered or passed, or hereafter to be had, levied, suffered or passed, shall be reverfable by any writ of error, for any rasure, interlining, misentering of any warrant of attorney, or of any proclamation, misreturning or not returning of the sheriff, or other want of form in words, and not in matter of substance.

X. *And be it further enacted by the authority aforesaid,* That no fine or common recovery shall hereafter be reversed or avoided, for any error or defect therein, unless the writ of error, or suit for reversing such fine or recovery, be commenced or brought, and prosecuted with effect, within five years after such fine levied, or recovery suffered. Provided always, That if any person who is or shall be entitled to any such writ of error as aforesaid, shall, at the time of such title accrued, be within the age of twenty-one years, or covert of baron, or imprisoned, or not of sound mind, or out of this state, then such person, or his or her heirs, notwithstanding the said five years expired, shall and may bring his, her or their writ of error, for reversing any such fine or recovery, so as the same be brought within five years after his or her full age, discovery, enlargement out of prison, coming of sound mind, or coming within this state, but not afterwards, or otherwise.

C H A P. XLIV.

An ACT for the Prevention of Frauds.

Passed 26th February, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That all deeds of gift, and conveyances of goods and chattels, made or to be made in trust to the use of the person or persons making the same deed of gift or conveyance, shall be, and hereby are declared to be void and of none effect.

II. And for the avoiding and abolishing of all feigned, convenous and fraudulent scoffments, gifts, grants, alienations, conveyances, bonds, suits, judg-

ments and executions, as well of lands and tenements, as of goods and chattels, which have been and are devised and contrived of malice, fraud, covenant, collusion or guile, to the end, purpose and intent to delay, hinder or defraud creditors and others, of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures and demands, not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining and chevisance, between man and man, without which no commonwealth or civil society can be maintained or continued; *Be it further enacted by the authority aforesaid*, That all and

Conveyances to defraud creditors and others of their just demands, void as to them. every feoffment, gift, grant, alienation, bargain and conveyance of lands, tenements, hereditaments, goods and chattels, or of any of them, or of any lease, rent, common or other profit or charge out of the same lands, tenements, hereditaments, goods or chattels, or any of them, by writing or otherwise, and all and every bond, suit, judgment and execution, at any time had or made, or hereafter to be had or made, to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken (only as against that person or persons, his, her or their heirs, successors, executors, administrators and assigns, and every of them, whose actions, suits, debts, accounts, damages, penalties, forfeitures and demands, by such guileful covenant or fraudulent devices and practices as aforesaid are, or shall, or may be in any wise disturbed, hindered or defrauded) to be clearly and utterly void, frustrate and of none effect; any pretence, colour, feigned consideration, exprelling of use, or any other matter or thing to the contrary notwithstanding.

III. And for as much as not only the people of this state, but divers of the citizens thereof, and bodies politic and corporate, after conveyances obtained or to be obtained, and purchases made or to be made, of lands, tenements, leases, estates and hereditaments, for money or other good considerations, may have, incur and receive great loss and prejudice, by reason of fraudulent and covenantous conveyances, estates, gifts, grants, charges and limitations of uses heretofore made, or hereafter to be made, of, in or out of the lands, tenements or hereditaments so purchased, or to be purchased; which said gifts, grants, charges, estates, uses and conveyances were, or hereafter shall be meant and intended, by the parties who so make the same, to be fraudulent and covenantous, of purpose and intent to deceive such as have purchased, or shall purchase the same; or else by the secret intent of the parties the same to be to their own proper use, and at their free disposition, coloured nevertheless by a feigned countenance, and shew of words and sentences, as though the same were made bona fide, for good causes, and upon just and lawful considerations: For remedy of which inconveniencies, and for the avoiding of such fraudulent, feigned and covenantous conveyances, gifts, grants, charges, uses and estates, and for the maintenance of upright and just dealing in the purchasing of lands, tenements and hereditaments; *Be it further enacted by the authority aforesaid*, That all and every conveyance,

Conveyances made to defraud or deceive purchasers, void as to them. grant, charge, lease, estate, incumbrance and limitation of use or uses, of, in or out of any lands, tenements or other

hereditaments whatsoever, had or made, or hereafter to be had or made, for the intent and purpose to defraud and deceive such person or persons, bodies politic or corporate, as have purchased or shall hereafter purchase any estate of inheritance, or for life, lives or years, of or in the same lands, tenements or hereditaments, or any part or parcel thereof, so before

conveyed, granted, leased, charged, incumbered or limited in use, or to defraud and deceive such as have or shall purchase any rent, profit or commodity, in or out of the same, or any part thereof, shall be deemed and taken (only as against the person and persons, bodies politic and corporate, his, her and their heirs, successors, executors, administrators and assigns, and against all and every other person and persons, lawfully having or claiming by, from or under them, or any of them, who have purchased, or shall hereafter so purchase, for money or other good consideration, the same lands, tenements or hereditaments, or any part or parcel thereof, or any rent, profit or commodity in or out of the same) to be utterly void, frustrate and of none effect; any pretence, colour, feigned consideration, or expressing of any use or uses to the contrary notwithstanding.

Penalty on persons
justifying such con-
veyances.

IV. *And be it further enacted by the authority aforesaid,*

That all and every the parties to such feigned, covenous or fraudulent feoffment, gift, grant, alienation, bargain, lease, charge, conveyance, bonds, suits, judgments, executions, and other things before expressed, or being privy or knowing of the same, or any of them, who at any time hereafter shall wittingly and willingly put in use, avow, maintain, justify or defend the same, or any of them, as true, simple and done, had or made, bona fide, and upon good consideration, or shall alien or assign any the lands, tenements, goods, leases or other things before mentioned, to him, her or them conveyed as aforesaid, or any part thereof, shall incur the penalty and forfeiture of one year's value of the said lands, tenements and hereditaments, leases, rents, commons or other profits, of or out of the same, and the whole value of the said goods and chattels, and also so much money as is or shall be contained in any such covenous and feigned bond; the one moiety whereof to be paid to the people of the state of New-York, and the other moiety to the party or parties grieved by such feigned and fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, leases, rents, commons, profits, charges, and other things aforesaid; to be recovered in any court of record, by action of debt, bill, plaint or information.

Persons granting
lands, with clause of
revocation, and after-
wards selling the
same, the former grant
to be void.

V. *And be it further enacted by the authority aforesaid,*

That if any person or persons have made, or hereafter shall make any conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance, of, in or out of any lands, tenements or hereditaments, with any clause, provision, article or condition of revocation, determination or alteration, at his, her or their will or pleasure, of such conveyance or assurance, gift, grant, limitation of use or uses, or estates, of, in or out of the said lands, tenements or hereditaments, or of, in or out of any part or parcel of them, contained or mentioned in any writing, deed or indenture; and after such conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance so made or had, shall or do bargain, sell, demise, grant, convey or charge the same lands, tenements or hereditaments, or any part or parcel thereof, to any person or persons, bodies politic and corporate, for money, or other good consideration paid or given (the said first conveyance, assurance, gift, grant, demise, charge or limitation, not by him, her or them revoked, made void or altered, according to the power and authority reserved or expressed unto him, her or them, in and by the said secret conveyance, assurance, gift or grant) then the said former conveyance, gift, grant, demise, charge, limitation of use and uses, and assurance, as touching the said lands, tenements and hereditaments, so

after bargained, sold, demised, granted, conveyed or charged, against the said bargainees, vendees, lessees, grantees, and every of them, their heirs, successors, executors, administrators and assigns, and against all and every person or persons who have or claim, or shall or may lawfully have or claim any thing, by, from or under them, or any of them, shall be deemed, taken and adjudged to be void, frustrate and of none effect, by virtue and force of this act.

This act not to af-
fect bona fide convey-
ances to persons not
privity to such frauds.
Nor any bona fide
mortgage.

VI. *Provided always, and be it further enacted by the au-
thority aforesaid,* That this act, nor any thing therein con-
tained, shall not extend, or be construed to impeach, defeat,
make void or frustrate any conveyance, assignment of lease,
assurance, grant, charge, lease, estate, interest or limitation
of use or uses, of, in, to or out of any lands, tenements or hereditaments,
goods or chattels, at any time heretofore had or made, or hereafter to be had
or made, upon or for good consideration, and bona fide to any person or
persons, bodies politic or corporate, nor having, at the time of such convey-
ance or assurance to him, her or them made, any manner of notice, or
knowledge of such covin, fraud or collusion, as is aforesaid; and that no
lawful mortgage, made or to be made, bona fide, and without fraud or covin,
and upon good consideration, shall be impeached or impaired by force of
this act, but the same shall stand in like force and effect, as the same should
have done, if this act had never been made; any thing before in this act to
the contrary in any wise notwithstanding.

VII. And whereas sundry common recoveries of lands, tenements and
hereditaments have been had, and hereafter may be had, against a tenant of
the freehold, the reversion or remainder, or the right of the reversion or re-
mainder, then being in some other person or persons; *Be it further enacted
by the authority aforesaid,* That every such common recovery heretofore
had, and hereafter to be had, of any lands, tenements or hereditaments,
shall, as touching such person and persons who then had any reversion or
remainder, or right of reversion or remainder, and against the heirs of every
of them, stand, remain, and be of such like force and effect, and of none
other, as the same should have been if this act had never been made.

VIII. *Provided always, and be it further enacted by the authority aforesaid,*
That this act, or any thing herein before contained, shall not extend to make
void any estate or conveyance, by reason whereof any person or persons
shall use any voucher in any writ of formedon, now depending, or hereafter
to be depending; but that all and every such vouchers in any writ of for-
medon, shall stand and be in like force and effect, as if this act had never been
made.

IX. And for the prevention of many fraudulent practices, which are com-
monly endeavoured to be upheld by perjury, and subornation of perjury;

All estates by livery
and seisin only, or by
parol, to be consider-
ed as estates at will.

Except leases for
three years.

Be it further enacted by the authority aforesaid, That all leaf-
es, estates, interest of freehold, or terms of years, or any
uncertain interests of, in, to or out of any messuages, man-
ors, lands, tenements or hereditaments, made or created,
or hereafter to be made or created, by livery and seisin on-
ly, or by parol, and not in writing, and signed by the parties so making and
creating the same, or their agents thereunto lawfully authorised by writing,
shall have the force and effect of leases, or estates at will only, and shall not,
either in law or equity, be deemed or taken to have any other or greater
force or effect; any consideration for making any such parol leases, or de-

tates, or any former law or usage to the contrary notwithstanding. Except nevertheless, All leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term, shall amount unto two third parts, at the least, of the full improved value of the thing demised.

X. *And be it further enacted by the authority aforesaid,* That no leases, estates or interests, either of freehold, or terms of years, or any uncertain interest of, in, to or out of any messuages, manors, lands, tenements or hereditaments, shall at any time hereafter be assigned, granted or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting or surrendering the same, or their agents thereunto lawfully authorized by writing, or by act and operation of law.

XI. *And be it further enacted by the authority aforesaid,* That no action shall be brought whereby to charge any executor or administrator, upon any special promise to answer damages out of his own estate, or whereby to charge the defendant, upon any special promise, to answer for the debt, default or miscarriages of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorized.

XII. *And be it further enacted by the authority aforesaid,* That all declarations or creations of trusts or confidences, of any lands, tenements or hereditaments, shall be manifested and proved by some writing, signed by the party who is or shall be by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void, and of none effect: But all declarations or creations of uses, trusts or confidences of any fines, or common recoveries of any lands, tenements or hereditaments, manifested and proved, or which hereafter shall be manifested and proved, by any deed already made, or hereafter to be made, by the party who is or shall be by law enabled to declare such uses or trusts, after the levying or suffering of any such fines or recoveries, are, and shall be as good and effectual in the law, as if this clause of this act had not been made.

XIII. *Provided always, and be it further enacted by the authority aforesaid,* That where any conveyance hath been or shall be made, which shall create any trust arising of any lands, tenements or hereditaments, by which a trust or confidence shall or may arise or result, by implication or construction of law, or be transferred or extinguished by act or operation of law, then, and in every such case, such trust or confidence shall be of the like force and effect as the same would have been, if this act had not been made.

XIV. *And be it further enacted by the authority aforesaid,* That all grants and assignments of any trust or confidence, shall likewise be in writing, signed by the party granting or assigning the same, or by his or her last will in writing, or else shall likewise be utterly void, and of none effect.

XV. *And be it further enacted by the authority aforesaid,* That no contract for the sale of any goods, wares and merchandize, for the price of ten pounds or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give some-

thing in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain, be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

C H A P. XLV.

An ACT concerning the Proofs, Acknowledgments and Registries of certain Deeds and Conveyances.

Passed 1st March, 1787.

WHEREAS, during the late war between the United States of America, and the king of Great-Britain, many deeds, conveyances and writings, relating to the title or property of lands, messuages, tenements or hereditaments within this state, executed bona fide, and for good and valuable considerations, within the southern district of this state, have been proved and acknowledged before, and registered by persons residing in the said district, and deriving their authority from the said king: And whereas it has now become impracticable, from the death of many persons, and the removal of others from this state, before and since the conclusion of the said war, to have the said deeds, conveyances and writings proved, acknowledged and registered, in the manner required by the laws of this state, by reason whereof many of the said deeds, conveyances and writings will be rendered altogether invalid and ineffectual; Therefore, *Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That all deeds, conveyances and writings, relating to the title or property of any lands, messuages, tenements, or hereditaments, within this state, which have been executed bona fide, and for good or valuable considerations, within the southern district of this state, after the ninth day of July, in the year one thousand seven hundred and seventy-six, and before the twenty-fifth day of November, one thousand seven hundred and eighty-three, and have been proved and acknowledged before, and registered by any person or persons residing in the said district, and deriving authority, for the purpose, from the said king of Great Britain, in the mode and manner which have been usual in cases of the like nature, whilst this state was a colony, shall be as valid and effectual in the law, and shall have the like operation and effect, in every respect, to all intents, constructions and purposes whatsoever, as if the said deeds, conveyances and writings had been proved and acknowledged before, and registered by, persons duly authorized by the laws of this state to take the proofs and acknowledgments of the said deeds, conveyances and writings, and to register the same. Provided always, that nothing in this act shall be construed to prevent or stay any execution or writ of possession, in any cause wherein judgment has been given, and no execution or writ of possession issued.

C H A P. XLVII.

An ACT to reduce the Laws concerning Wills into one Statute.

Passed 3d March, 1787.

I. *BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That all and every person and persons having a sole estate or interest in fee

simple, or of any estate of inheritance, or seised in fee simple in coparcenary, or in common, in fee simple, or of any estate of inheritance, of and in any manors, lands, tenements, rents or other hereditaments, in possession, reversion or remainder, or of rents or services incident to any reversion or remainder, shall have full and free liberty, power and authority, to give, dispose, will or devise, to any person or persons (except bodies politic and corporate) by his last will and testament in writing, or otherwise by any act or acts lawfully executed in his life-time, by himself solely, or by himself and others jointly, severally or particularly, or by all those ways, or any of them, as much as in him of right is or shall be, all his said manors, lands, tenements, rents and hereditaments, or any of them, or any rents, commons or other profits or commodities, out of, or to be perceived of the same, or out of any part thereof, at his own free will and pleasure.

II. *Provided always, and be it further enacted by the authority aforesaid,* That all devises and bequests of any manors, lands, tenements, rents or hereditaments, or of any rents, commons or other profits or commodities, out of, or to be perceived of the same, shall be in writing, and signed by the party so devising the same, or by some other person in his presence, and by his express directions; and shall be attested and subscribed in the presence of the said devisor, by three or more credible witnesses, or else they shall be utterly void and of none effect.

How such wills may be revoked or cancelled.

III. *And be it further enacted by the authority aforesaid,* That no devise or bequest in writing, of any manors, lands, tenements, rents or hereditaments, or of any rents, commons or other profits or commodities, out of, or to be perceived of the same, or out of any parcel thereof, or any clause thereof, shall be revocable, otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing or obliterating the same, by the testator himself, or in his presence, and by his direction and consent; but all devises and bequests of any manors, lands, tenements, rents or hereditaments, or of any rents, commons or other profits or commodities, out of, or to be perceived of the same, or out of any parcel thereof, shall remain and continue in force until the same be burnt, cancelled, torn or obliterated by the testator, or by his directions, in manner aforesaid, or unless the same be revoked or altered by some other will or codicil in writing, or other writing of the devisor, signed in the presence of three or more witnesses, declaring the same.

Estates, pur autre vie, devisable.

IV. *And be it further enacted by the authority aforesaid,* That all estates pur autre vie, shall be devisable by will in writing, signed by the party so devising the same, or by some other person in his presence, and by his express directions, and attested and subscribed in the presence of the devisor, by three or more witnesses. And if no such devise thereof be made, the same, or so much thereof as shall not be so devised, shall go to the executors or administrators of the party who had the estate thereof by virtue of the grant, and shall be assets in their hands, and be applied and distributed in the same manner as the personal estate of the testator or intestate.

Wills made by feme covert, infants, idiots and lunatics, not good.

V. *And be it further enacted by the authority aforesaid,* That wills or testaments made of any manors, lands, tenements, rents or hereditaments, or of any rents, commons or other profits or commodities, out of, or to be perceived of the same, by any woman covert, or person within the age of twenty-

one years, idiot, or any person of unsane memory, shall not be taken to be good or effectual in the law.

Devise to any person attesting the execution of any will, void, &c. VI. *And be it further enacted by the authority aforesaid,* That if any person hath attested the execution of any will or codicil, after the first day of March, in the year of our

Lord one thousand seven hundred and fifty-three, or shall attest the execution of any will or codicil, hereafter to be made, to whom any beneficial devise, legacy, estate, interest, gift or appointment, of or affecting any real or personal estate, other than, and except charges on lands, tenements or hereditaments, for the payment of any debt or debts, hath been or shall be thereby given or made, such devise, legacy, estate, interest, gift or appointment, shall, so far only as concerns such person attesting the execution of such will or codicil, or any person claiming under him, be utterly null and void. And such person shall be admitted as a witness to the execution of such will or codicil, within the intent of this act, notwithstanding such devise, legacy, estate, interest, gift or appointment mentioned in such will or codicil.

Creditors admitted as good witnesses to wills. VII. *And be it further enacted by the authority aforesaid,* That in case, by any will or codicil made or to be made,

any lands, tenements or hereditaments, are or shall be charged with any debt or debts, and any creditor whose debt is so charged, hath attested, or shall attest the execution of such will or codicil, every such creditor, notwithstanding such charge, shall be admitted as a witness to the execution of such will or codicil, within the intent of this act. And further, That if any person hath attested the execution of any will or codicil, made on or before the said first day of March, in the year of our Lord one thousand seven hundred and fifty-three, to whom any legacy or bequest is thereby given, whether charged upon lands, tenements or hereditaments, or not; and such person, before he shall give his testimony concerning the execution of any such will or codicil, shall have been paid, or have accepted or released, or shall have refused to accept such legacy or bequest, upon tender made thereof, such person shall be admitted as a witness to the execution of such will or codicil, within the intent of this act, notwithstanding such legacy or bequest; and in case of such tender and refusal as aforesaid, such person shall in no wise be entitled to such legacy or bequest, but shall be forever afterwards barred therefrom; and in case of such acceptance as aforesaid, such person shall retain to his own use, the legacy or bequest which shall have been so paid, satisfied or accepted, notwithstanding such will or codicil shall afterwards be adjudged or determined to be void, for want of due execution, or for any other cause or defect whatsoever. And further, That in case any such legatee as aforesaid, who hath attested the execution of any will or codicil, made on or before the first day of March, in the year of our Lord one thousand seven hundred and fifty-three, shall have died in the testator's life time, or before he shall have received or released, or refused, on tender, his legacy; such legatee shall be deemed a legal witness to the execution of such will or codicil, within the intent of this act, notwithstanding such legacy or bequest. Provided always, That the credit of every such witness so attesting the execution of any will or codicil, in any of the cases in this act before mentioned, and all circumstances relating thereto, shall be subject to the consideration and determination of the court, and the jury before whom any such witness shall be examined, or his testimony or attestation made use of, or of the court of equity, in which the testimony or attestation of any such

witness shall be made use of, in like manner, to all intents and purposes, as the credit of witnesses, in all other cases, ought to be considered of and determined.

VIII. And be it further enacted by the authority aforesaid, That no legatee refusing his legacy, and attesting the will, shall be entitled to such legacy. That no person to whom any beneficial estate, interest, gift or appointment, hath been or shall be given or made, which is hereby enacted to be null and void, or who shall have refused to receive any such legacy or bequest, on tender made as aforesaid, and who shall have been examined as a witness concerning the execution of such will or codicil, shall, after he shall have been so examined, demand or take possession of, or receive any profit or benefit of or from any such estate, interest, gift or appointment, so given or made to him, in or by any such will or codicil, or demand, receive or accept, from any person or persons whatsoever, any such legacy or bequest, or any satisfaction or compensation for the same, in any manner, under any colour or pretence whatsoever.

IX. And be it further enacted by the authority aforesaid, That the clauses in this act concerning the competency or credibility of the witnesses to wills and codicils, made on or before the said first day of March, in the year of our Lord one thousand seven hundred and fifty-three, shall not extend, or be construed to extend to the case of any heir at law, or of any devisee in a prior will or codicil of the same testator, executed and attested according to this act, or any person claiming under either of them respectively, who was in quiet possession on the said first day of March, in the year of our Lord one thousand seven hundred and fifty-three, as to such lands, tenements and hereditaments, whereof he was then in quiet possession as aforesaid; nor

Nor to any will contested by suit, by such heir or devisee, and determined in his favor. to any will or codicil, the validity or due execution whereof hath been contested in any suit in law or equity, commenced by the heir of such deviser, or the devisee in any such prior will or codicil, for recovering the lands, tenements or hereditaments mentioned to be devised in any will or codicil so contested, or any part thereof, or for obtaining any other judgment or decree relative thereto, and which has been already determined in favour of such heir at law, or devisee in such prior will or codicil, or any person claiming under them respectively; but no possession of any heir at law, or devisee in such prior will or codicil as aforesaid, or of any person claiming under them respectively, which is consistent with, or may be warranted by or under any will or codicil, attested according to the true intent and meaning of this act; or where the estate descended, or might have descended to such heir at law, until a future or executory devise, by virtue of any will or codicil attested according to this act, should or might take effect, shall be deemed to be a possession within the intent of this clause of this act.

X. And be it further enacted by the authority aforesaid, That where any lands, tenements or hereditaments have been, or shall be given or devised by any last will or testament, executed in due form of law as aforesaid, to the executors therein named, or any of them, to be sold, or hath been or shall be thereby ordered or directed to be sold by the executors therein named, or any of them; and after the death of such testator, part of such executors named in such last will and testament, refuse

Where lands are directed in any will to be sold by the executors, and part refuse to act, such as do accept may sell the same.

or neglect to take upon him or them the execution or administration and charge of the same last will and testament, wherein they be so named to be executors, and the residue of the executors do accept and take upon them the execution, administration and charge of the same last will and testament, then all bargains and sales of any such lands, tenements or hereditaments so willed to be sold by the executors of any such testator, as well heretofore made as hereafter to be made, by him or them only of the said executors that so do accept, or that heretofore have accepted and taken upon him or them any such charge of administration of any such will or testament, shall be as good and as effectual in the law, as if all the residue of the same executors named in the said will or testament, so refusing the administration of the same will or testament, had joined with him or them in the making of the bargain and sale of such lands, tenements or other hereditaments, so willed to be sold by the executors of any such testator, who hath heretofore made or declared, or who hereafter shall make or declare any such will of any such lands, tenements or other hereditaments, after his decease, to be sold by his executors.

XI. And be it further enacted by the authority aforesaid, That when any person hath, or shall have, any child or children under the age of twenty-one years, and not married at the time of his death, that it shall and may be lawful to and for the father of such child or children, whether born at the time of the decease of the father, or at that time in ventre sa mere, or whether such father be within the age of twenty-one years, or of full age, by his deed executed in his life time, or by his last will and testament in writing, signed by such father, or by some other person in his presence, and by his express direction, and attested and subscribed in the presence of such father by three or more credible witnesses, in such manner and form, and from time to time, as he shall respectively think fit, to dispose of the custody and tuition of such child or children, for and during such time as he or they shall respectively remain under the age of twenty-one years, or any less time, to any person or persons, in possession or remainder; and that such disposition of the custody of such child or children, made, or hereafter to be made, shall be good and effectual against all and every person and persons claiming the custody or tuition of such child or children, as guardian in socage, or otherwise; and that such person or persons to whom the custody of such child or children hath been, or shall be so disposed or devised as aforesaid, shall and may maintain an action of ravishment of ward, or trespass against any person or persons who shall wrongfully take away or detain such child or children for the recovery of such child or children; and shall and may recover damages for the same, in the said action, for the use and benefit of such child or children.

XII. And be it further enacted by the authority aforesaid, That such person or persons to whom the custody of such child or children, hath been or shall be so disposed or devised, shall and may take into his and their custody, to the use of such child or children, the profits of all lands, tenements and hereditaments of such child or children, and also the custody, tuition and management of the goods, chattels and personal estate of such child or children, until their respective age of twenty-one years, or any less time, according to such disposition aforesaid, and may bring such action or actions in relation thereunto, as by law a guardian in common socage might do.

A father may, by deed or will, dispose of the custody and tuition of his children under age.

Such persons to take the profits of the estate of such children to their use.

XIII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for all and every person and persons, by his or their testament or last will in writing, to give, bequeath or dispose of all his, her or their goods, chattels and personal estate, in the same manner as he, she or they lawfully might do before the passing of this act.

XIV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for widows to bequeath the crop of their ground, as well of their dowers as of their other lands and tenements.

XV. *And be it further enacted by the authority aforesaid,* That no nuncupative will heretofore made, or hereafter to be made, shall be good, where the estate thereby bequeathed shall exceed the value of thirty pounds, lawful money of this state; unless the same be proved by the oaths of three witnesses at the least, who were present at the making thereof; nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, bear witness that such was his or her will, or words to that effect; nor unless such nuncupative will was made in the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she hath been resident for the space of ten days or more, next before the making of such will; except where such person was surprised or taken sick, being from his or her own home, and died before he or she returned to the place of his or her dwelling.

XVI. *And be it further enacted by the authority aforesaid,* That after six months passed, after the speaking of the pretended testamentary words, no testimony shall be received to prove any nuncupative will, except the said testimony, or the substance thereof, were committed to writing, within six days after the making of the said will.

XVII. *And be it further enacted by the authority aforesaid,* That no letters testamentary, or probate of any nuncupative will, shall pass the seal of any court until fourteen days at the least after the decease of the testator shall be fully expired; nor shall any nuncupative will be at any time received to be proved, unless process hath first issued to call in the widow, or next of kindred to the deceased, to the end they may contest the same if they please.

XVIII. *And be it further enacted by the authority aforesaid,* That no will or testament in writing, concerning any goods or chattels, or personal estate, shall be repealed, nor shall any clause, devise or bequest therein, be revoked, altered or changed, by any words, or will by word of mouth only, except the same be in the life time of the testator, committed to writing, and after the writing thereof, read unto the testator, and allowed and approved of by him or her, and proved so to be done by three witnesses at the least.

XIX. *And be it further enacted by the authority aforesaid,* That all such witnesses as are and ought to be allowed to be good witnesses upon trials at law, by the laws and customs of this state, shall be deemed good witnesses to prove any nuncupative will, or any thing relating thereunto.

XX. *And be it further enacted by the authority aforesaid,* That this act shall extend as well to wills and testaments made within sixty years last past, except where it is otherwise herein before provided, as to wills and testaments hereafter to be made.

A soldier or mariner may dispose of his personal estate as before this act.

XXI. *Provided always, and be it further enacted by the authority aforesaid, That notwithstanding this act, any soldier being in actual military service, or any mariner or seaman, being at sea, may dispose of his moveables, wages and personal estate, as he or they might have done before the making of this act.*

C H A P. XLVIII.

An ACT for preventing and avoiding Alienations by Tenants for Life, and Recoveries by Collusion.

Passed 3d March, 1787.

I. *BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That if any woman who hath had, now hath, or hereafter shall have, any estate in dower, or for term of life, jointly with her husband, or only to herself, or to her use, in any lands, tenements or hereditaments, of the inheritance or purchase of her husband, or given to the said husband and his wife for term of life, by any of the ancestors of the said husband, or by any other person, seised to the use of the said husband or of his ancestors, and being sole, or with any other after-taken husband, hath discontinued, aliened, released or confirmed, or hereafter shall discontinue, alien, release or confirm, with warranty or without warranty, or hath suffered, or shall suffer any recovery by covin against her, them or any of them, or any other seised to their use, or to the use of either of them as aforesaid; that all such recoveries, discontinuances, alienations, releases, confirmations and warranties, so had and made, and henceforth to be had and made, shall be utterly void and of none effect. And that it shall be lawful to every person and persons, to whom the interest, title or inheritance, after the decease of such woman, of the said lands, tenements and hereditaments, so being discontinued, aliened or suffered to be recovered as aforesaid, do or shall appertain, to enter into all and every of the said premises, and peaceably to possess and enjoy the same, in such manner and form as he, she or they should have done, if no such discontinuance, alienation, warranty or recovery had been had or made. And further, That if any such woman, with any such after-taken husband, or any other seised, or who shall be seised to their or either of their use, of such estate as aforesaid, shall, during the coverture between them, make or cause to be made, or suffer any such discontinuance, alienation, warranty or recovery, in form aforesaid, that then it shall be lawful to the person or persons, to whom the said lands, tenements, or hereditaments should or ought to belong, after the decease of the said woman, immediately after the said discontinuance, alienation, warranty or recovery, to enter into the same lands, tenements and hereditaments, and them to possess and enjoy during the life of the said husband, according to such title and interest as they should have had in the same, if the same woman had been dead, and no discontinuance, warranty nor recovery had: But that the said woman, in such case, after the decease of the said husband, if she survive him, may re-enter into the same lands, tenements and hereditaments, and enjoy the same according to her first estate in the same. But if the said woman, at the time of such discontinuance, alienation, recovery or warranty, in form aforesaid, to be had, made or suffered, of any of the premises, be sole, that then she shall be barred and excluded of her title and interest in the same from thenceforth; and the person or persons to whom the title, interest and posses-*

sion of the same should belong, after the decease of the said woman, shall immediately after the said discontinuance, alienation, warranty or recovery, enter into the same lands, tenements and other hereditaments, and possess and enjoy the same according to his, her or their title in the same. Provided always, That this act shall not extend to any such recovery or discontinuance had or to be had, with the heirs next inheritable to the said woman, or where he or they, that next after the death of the same woman, should have estate of inheritance in the same lands, tenements or hereditaments, be assenting or agreeable to the said recovery, where the same assent or agreement is of record or enrolled. And provided also, That it shall be lawful to every such woman, being sole or married, after the death of her first husband, to give, sell or make discontinuance of any such lands, tenements or hereditaments, for term of her life only, after the course and use of the common law.

II. *And be it further enacted by the authority aforesaid,* That no fine, feoffment, or other act or acts, made, suffered or done, or hereafter to be made, suffered or done by the husband only, of any lands, tenements or hereditaments, being the inheritance or freehold of his wife, during the coverture between them, shall in any wise be, or make any discontinuance thereof, or be prejudicial or hurtful to the said wife, or to her heirs, or to such as shall have right, title or interest to the same, by the death of such wife: But that the same wife, or her heirs, and such other to whom such right shall appertain, after her decease shall and may then lawfully enter into all such lands, tenements and hereditaments, and hold and enjoy the same, according to their rights and titles therein, as if no such fine, feoffment or other act had been done or suffered.

How a woman may recover her lands lost by default of her husband, by a cui in vita.
III. And whereas, when a man doth lose by default the land which was the right of his wife, it is very hard that the wife, after the death of her husband, should have none other recovery but by writ of right: For remedy whereof, *Be it further enacted by the authority aforesaid,* That a woman, after the death of her husband, shall recover by a writ of entry, whereto she could not disagree during his life, which shall be pleaded in the following form: If the tenant do except against the demand of the wife, that he entered by judgment, and it be found that his entry was by default, whereto the tenant of necessity must make answer, if it be demanded of him, then he shall be compelled to make further answer, and to shew his right according to the form of the writ that he purchased before against the husband and the wife; and if he can verify that he hath or had right in the land demanded, the woman shall gain nothing by her writ; which thing, if he cannot shew, the woman shall recover the land in demand.

IV. *And be it further enacted by the authority aforesaid,* That when any husband and wife shall be impleaded, if the husband absent himself, and will not defend his wife's right, or against his wife's consent will render the land, if the wife do come before judgment, ready to answer the demandant, and to defend her right, the wife shall be admitted without her husband.

V. *And be it further enacted by the authority aforesaid,* That if any tenant in dower, tenant by the courtesy, or other tenant for term of life or lives, is or shall be impleaded, and he, she or they to whom the reversion or remainder doth or shall appertain, shall come into court, and pray to be received to defend his, her or their right, at the day that the tenant pleadeth to the action,

or before, and before judgment, he, she or they shall be received to defend his, her or their right, and to plead in chief to the action. And that days of grace shall be given by the discretion of the court, between the demandant and him, her or them, who is, are or shall be received in such case, without giving the common days in pleas of land, unless the demandant will consent, to the intent that the demandant be not too much delayed, because he must plead with two adversaries. Provided always, That he, she and they, who shall come in by a collateral title, and desire to be received as aforesaid, as well where the receipt is counterpleaded, as where it is granted, shall before he, she or they be received, find sufficient surety, as the court shall award, to satisfy the demandant of the issues of the tenements demanded, from the day that he, she or they shall be received, until the time that final judgment be given, if judgment pass for the demandant against him, her or them, in reversion or remainder aforesaid. And if the demandant recover his demand, he shall also recover his damages and costs of suit against such tenant by receipt: But if such tenant can prove his or her right to as good as he or she affirmed, at such time as he or she was received, then he or she shall go quit, and recover his or her costs against the demandant.

VI. *And be it further enacted by the authority aforesaid,* That if any tenant in dower, tenant by the courtesy, or other tenant for term of life or lives, who hath been, now is, or shall be impleaded, hath made, or shall make default, or hath given, or shall give up the tenements demanded, and judgment hath been or shall be given upon such default or surrender, then the heirs, or he, she or they to whom the reversion or remainder doth or shall appertain, after the death of such tenants, shall have their recovery by a writ of entry, in which the like process shall be observed, as in cases where the husband loseth his wife's land by default; and so in the cases aforesaid, two actions do concur, one between the demandant and tenant, and another between the tenant shewing his or her right, and the demandant.

VII. *And be it further enacted by the authority aforesaid,* That if any tenant for term of life, tenant in dower or tenant by the courtesy, be impleaded and plead to an inquest, and lose by the oath of twelve men, or by default, or in other manner, that the person or persons to whom the reversion or remainder of the tenements so lost doth or shall appertain, at the time of such judgment given, his, her or their heirs or successors, shall have an action by writ of $\frac{1}{2}$ attain, to attain the same oath, if he, she or they, will assign the same oath to be false; and also by writ of error, if error be found in the record of such judgment, as well in the life time of such tenants who have lost or shall lose, as after their death. And if such judgment be reversed, or such oath be found false, that the tenant who lost by the first judgment, if he or she be in life, shall be restored to his or her possession of the tenements so lost, with the issues in the mean time; and the party pursuing to the arrearages of rent, if any be due, for the same tenement. And if such tenant be dead, at the time of the judgment given upon such writs of attain, or of error, that restitution be made to the party pursuing, with the issues, after the death of the said tenant, together with the arrearages of rent, if any to him or her were due, in the life time of the said tenant. Provided always, That although the tenant who so lost by the first judgment, be in life, if the party pursuing will alledge, that the same tenant was of covin, and of assent of the demandant who recover-

$\frac{1}{2}$ Attain abolished
11th sess. ch. 46, sec.
56.

ed that such tenement should be lost, that restitution of the same tenements shall be made to the same party pursuing, with the issues and arrearages as aforesaid. But in such case such tenant shall have his or her action by writ of scire facias, out of the same judgment so reversed or given, on such writ of attain, or writ of error, if he or she will traverse the covin and assent aforesaid, and not otherwise.

Alienation by tenant by the courtesy or husband not to bar the issue of the inheritance of their mother.

VIII. *And be it further enacted by the authority aforesaid,* That if any man hath aliened, or shall alien any tenement which he held, or doth or shall hold by the courtesy, his children shall not be barred by the deed of their father, to demand and recover of the seisin of their mother, although the deed of their father doth or shall mention that he and his heirs be bound to warranty. Nor shall the issue of any such children be barred in such case, by any such deed. And likewise, and in like manner the heirs of the wife shall not be barred of their action, after the death of their father and mother, by the deed of their father, if they demand by action the inheritance of their mother, which their father did alien in the life-time of their mother,

No suit by a woman or her heirs, for lands aliened by her husband, to be delayed by non-age.

IX. *And be it further enacted by the authority aforesaid,* That the suit of the woman, or her heirs, after the death of her husband, for lands or tenements aliened by the husband, shall not be delayed by the non-age of the heir or heirs who ought to warrant : But let the purchaser, who ought not to have been ignorant that he or she bought the right of another, tarry until the full age of his or her warrantor, to have his or her warranty.

X. And whereas divers persons being seised of lands, tenements and hereditaments, as tenants by the courtesy, or otherwise, only for term of life or lives, or of estates determinable upon life or lives, have permitted or suffered other persons, by agreement or covin between them had, to recover the same lands, tenements and hereditaments, against the same particular tenants ; or have permitted or suffered themselves to be vouched by other persons, by agreement or covin between them had, in recoveries suffered of the same lands, tenements and other hereditaments, to the prejudice of those to whom the reversion or remainder thereof appertained, or ought to appertain ; for remedy whereof, *Be it further enacted by the authority aforesaid,* That all

Recoveries by agreement or covin, against tenants by courtesy, or for term of life, void as to the reversion or remainder msp.

such recoveries heretofore had or prosecuted, or hereafter to be had or prosecuted, by agreement of the parties, or by covin as aforesaid, against any such particular tenant, of any lands, tenements or hereditaments, whereof the same particular tenant was, is or shall be seised, of any such particular estate as aforesaid, or against any other, with voucher over of any such particular tenant, or of any having, or that had right or title to any such particular estate or tenancy as aforesaid, shall from henceforth, as against such person or persons to whom any reversion or remainder thereof, by force of any conveyance or devise, before that time had or made, did, shall, ought or lawfully may appertain, and against their heirs and successors, be clearly and utterly void, and of none effect. Provided always, That nothing herein contained shall extend, or be prejudicial to any person or persons who hath or have, or hereafter shall, by good title, recover any lands, tenements or hereditaments, without fraud or covin, by reason of any former right or title ; but that all and every such recovery and recoveries, so had or prosecuted, or to be had or prosecuted, upon former rights or titles, shall stand and be in like force, strength and effect, as if this act had not

been made. Provided also, That all and every such recovery and recoveries, heretofore had or prosecuted, or hereafter to be had or prosecuted, of any lands, tenements or hereditaments as aforesaid, by the assent and agreement of any person or persons to whom any reversion or remainder thereof, then did, shall, or ought to appertain, so as the same assent and agreement do appear of record in the court where such recovery is or shall be had, shall stand and be of like force, strength and effect, against such person and persons, who did or shall so assent and agree, their heirs and successors, as if this act had not been made.

XI. And whereas before this time, divers persons have made leases of their manors, lands, tenements and other hereditaments, sometimes by deed and sometimes without writing, to other persons, for term of years, and afterwards the same lessors, their heirs or assigns, have caused or suffered recoveries to be had against them, upon feigned and untrue titles by craft or covin, to put the same farmers from their said terms, and after such recoveries had, the said recoverers, by reason of such recoveries and judgments, have entered into the said manors, lands, tenements and other hereditaments, so to farm letten, and thereof have expelled the said farmers, contrary to their said leases, covenants and agreements; And because it hath been doubted whether the same farmers might falsify such recoveries or not; Therefore, *Be it further enacted by the authority aforesaid,* That every such farmer shall and may

Lessees may falsify falsify, for his and her term only, such recoveries, as well recoveries, heretofore had as hereafter to be had, in such wise and form, as a tenant of the freehold shall and may do, by the course of the common law, where such tenant of the freehold was neither privy nor party to the same recovery. And further, That the same farmers, their execu-

And retain their tors, administrators and assigns, notwithstanding such recoveries so had, shall retain, hold and enjoy their said terms, farms.

And such recoverers according to their said leases, against all such recoverers, their heirs and assigns, as they should or might have done, against the said lessors, if such recovery had not been had nor suffered. And that the said

And such recoverers recoverers, their heirs and assigns, after such recovery so to have like remedy recoverers, their heirs and assigns, after such recovery so for rents and waste, had, shall have the like remedy against the said farmers, as if no recovery was had, their executors, administrators and assigns, by avowry or

action of debt, for the rents and services reserved upon the same leases, being due, after the same recoveries; and also like actions against them for waste done, after the same recoveries so had, in like manner and form as the said lessors should or might have had, if the same recoveries had never been had. And likewise, No execution shall hereafter be avoided, or in any wise made frustrate, by means of any such feigned recovery; but that all such persons having any lands, tenements or other hereditaments, in execution, or being entitled to have execution of any lands, tenements or hereditaments, shall have, by force of this statute, like means to avoid and falsify the same recoveries, as is above provided for the lessees for term of years.

C H A P. L.

An ACT for giving further Remedy, and regulating the Process and Proceedings in Assises, and other Actions.

Passed 12th March, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,

That if the alienations whereupon writs of entry ought to be granted, happen to be made in so many degrees, that by reason thereof the writ of entry cannot be made in the usual form, mentioning the degrees, then the demandants shall have a writ to recover their seisin, without making mention of the degrees, into whose hands soever the tenements shall happen to come by such alienations; but writs of entry without mentioning the degrees, shall not be maintained, but in cases where the writs making mention of the degrees, cannot lie or hold place.

II. *And be it further enacted by the authority aforesaid*, That if any person hath died, or shall die, leaving several persons his or her heirs, either in the same degree, or in different degrees, all such heirs shall or may recover in one writ or action, as heirs of the deceased person.

III. *And be it further enacted by the authority aforesaid*, That a writ of deceit shall be maintainable and hold place, as well in the case of garnishment touching plea of land, where such garnishment is given, as in the case of summons in a plea of land.

IV. And whereas formerly, if any person had lost his or her lands or tenements by default, he or she had no other recovery but by writ of right, which was not maintainable by any who could not claim of mere right as tenants for term of life, where a reversion is reserved; Therefore, *Be it further enacted*

How persons losing by default may recover. *ed by the authority aforesaid*, That their default shall not be so prejudicial, but that they may recover their estate by another writ than by writ of right, if they have right; and for

recovery of land for term of life, lost by default, a writ shall be made in this form:

COMMAND A, That justly and without delay, he render to B, one messuage, with the appurtenances, in C, which he claims to hold for term of his life, and which the aforesaid A, doth deforce him.

V. *And be it further enacted by the authority aforesaid*, That in cases of nuisance, the plaintiff shall not go without remedy, because the land is transferred to another. And further, That where the writ is granted against him or her who hath levied or shall levy the nuisance, the writ shall be made as hath been heretofore used, in the following form:

A, B, hath complained to us, That C, D, unjustly, and without judgment, hath erected (or made or levied) a house (or a wall, sink, pond, or whatever other thing it may be) to the nuisance of his freehold.

And if such things so levied, erected or made, be aliened from one to another, the writ shall be thus:

A, B, hath complained to us, That C, D, and E, F, have erected

And further, That all writs of nuisances shall, from henceforth, be made returnable, and be determined in the nature of assises, either in the Supreme court, or at the circuit court in the county where such nuisances shall happen.

VI. *And be it further enacted by the authority aforesaid*, That whensoever in one case a writ is found and used in the chancery, and in a like case falling under like law, and requiring like remedy, there is none found, a proper writ shall be devised and made in such case. And that suitors may not go without remedy, they shall have writs according to their cases.

VII. *And be it further enacted by the authority aforesaid*, That a writ of novel disseisin shall lie and be maintainable for estovers of wood, and for any profit to be taken in woods; for a corody; for delivery of corn and other

victuals and necessities, to be received yearly, in a place certain ; for toll, passage, and such like, to be taken in places certain ; and for offices in fee, or for life, as well as for lands and tenements ; and for common of pasture, fishing and such like commons, which any person hath or shall have appendant to freehold, or without freehold, by special deed, at the least for term of life ; and in all the cases aforesaid, according to the accustomed manner, the writ shall express the thing in demand to be a free tenement. And although it has been doubted whether a remedy could be had by this writ, where one feedeth the several pasture of another, it is hereby declared, that a good and sure remedy is given in that case, by the said writ. And further, When any

Remedy in case of alienation.

person holding for term of years, or in ward, doth alien the same in fee, and by such alienation the freehold is transferred to the feoffee, then remedy shall or may be by writ of novel disseisin, and as well the feoffors as the feoffee shall be had for disseisors, so that during the life of any of them the said writ shall hold place ; and if by the death of the parties the remedy fail by that writ, the remedy may be had by writ of entry.

VIII. *And be it further enacted by the authority aforesaid,* That if any person or persons named disseisors in any writ of assise of novel disseisin, alledge any false exception, whereby the taking of the assise may be deferred, as that at another time an assise of the same land passed between the said parties, or that a writ of a higher nature is depending between the same parties of the same land, and upon these, and like matters, do vouch rolls or records to warranty ; then, and in every such case, if he or she who shall alledge such exception, fail of the warranty that he or she hath vouched, at the day to him or her given, he or she shall be adjudged for a disseisor, without taking the assise, and shall restore the damages before enquired of, or after to be enquired of, to the double. And if such exception be alledged by a bailiff, the taking of the assise shall not be delayed therefore, nor the judgment upon the restitution of the lands and damages. But if the master of such bailiff that was absent, come afterwards before the same justices or justice who took the assise, and offer to prove by record or rolls, that at another time an assise passed between the same parties, of the same lands, or that the plaintiff at another time did withdraw his or her suit in a like writ, or that a plea is depending by a writ of a higher nature, a writ of venire facias shall be granted unto him, to cause the same record to be brought ; and when he hath the same, and the justices do perceive that the record so shewed by him, would have been so available before the judgment, that the plaintiff, by force of the same, should have been barred of his or her action, the justices shall immediately cause the party who first recovered, to be warned to appear at a certain day, at which the defendant shall have again his or her seisin and damages, if he or she before paid any by the first judgment given, which shall be restored to him or her to the double as aforesaid ; and in the same manner, if the defendant against whom any assise shall pass in his or her absence, shew any deeds or releases upon which the jury were not examined, nor could be examined, because no mention was made of them in pleading, and by probability might be ignorant of them, the justices, upon the sight of these writings, shall cause the party who first recovered, to be warned to appear at a certain day, and shall cause the jurors of the same assise to come. And if such defendant shall verify those writings to be true, by the verdict of a jury, or by enrollment, he or she who purchased the assise contrary to his or her own deed, shall restore to him or her the damages before recovered as aforesaid.

Suits maintainable
against disseisors tak-
ing the profits after
alienation.

IX. And whereas many persons do disseise others of their tenements, and after such disseisin done, make divers alienations and feoffments thereof, whereby the said disseisees, and other demandants and their heirs, are delayed of their recovery; Therefore, *Be it further enacted by the authority aforesaid*, That the said disseisees shall, from henceforth, have their recovery against the first disseisors, during their lives, if they take the profits at the time of the suit commenced, as well of the lands and tenements, as of their double damages, without having any regard to such alienations, gifts or feoffments. And further, That this shall hold place in every other action, in plea of land, where such feoffments be made by fraud or collusion, for the demandants to have their recovery against such first feoffors, if they thereof take the profits.

No sheriff to dis-
seise any person with-
out writ.

X. *And be it further enacted by the authority aforesaid*, That no sheriff or other officer, by colour of his office, without special warrant or commandment, or authority certain pertaining to his office, disseise any person of his or her freehold, nor of any thing belonging to his or her freehold. And if any do, it shall be lawful for the person disseised to sue at the common law, by writ of novel disseisin; and he who shall be convicted thereof, shall pay double damages to the plaintiff, and be further punished by fine or imprisonment, at the discretion of the justices.

XI. *And be it further enacted by the authority aforesaid*, That in case any lands or tenements have been, or shall be granted by letters patent, without title found by inquest or otherwise, where the entry of the people of this state is not given by law, they who shall be put out or disseised of their freehold, shall or may have a special assise granted by the chancellor, without any suit to the people of this state in that behalf to be made; and if the parties or persons who have such letters patent, do pray in aid, a writ of procedendo shall be granted by the chancellor; and in case they who be so put out or disseised, recover against the persons having such patents, they who be so put out or disseised shall recover their treble damages.

XII. And whereas divers persons do make forcible entries into the lands and tenements of others, and put the possessors out of the same, claiming sometimes in their own right, where their entry is not lawful, and sometimes in the right of others, where they have nothing in reversion, in right nor in demesne, and there is not any affinity or consanguinity between them, and those in whose right they have entered, and sometimes take away the goods and chattels of the possessor; Therefore, *Be it further enacted by the authority aforesaid*, That if any person, of what estate or condition soever he or she may be, hath made, or shall make any such forcible entry, in his or her own right, or to his or her own use, or in the right, or to the use of any other, by way of maintenance, or take or carry away any goods, after such forcible entry, from the possessor of the freehold, then, and in every such case, if the party grieved, or other lawful man for him or her, will make affidavit that the entry was made in such forcible manner, the chancellor shall have power, by his discretion, to grant a special assise in this case, to the party aggrieved, of whatsoever value the tenements may be; and if such disseisor be convicted of such disseisin, made in such forcible manner, he or she shall yield to the party grieved, his or her double damages, and be further punished by fine or imprisonment, according to the discretion of the justices. And if such dissei-

On proof of forcible entry special assise to be granted and the disseisee to recover double damages, &c.

for be convicted by the same assise, that he or she hath taken or carried away the goods or chattels of such disseisees, the justices of assise shall have power to hear and determine, as well for the people of this state, as for the party, of the goods and chattels so carried away, and to award to the party grieved, his or her damages. And further, That in every such special assize, one at least of the justices of the supreme court, be named as one of the justices to take such assise, and that no writ of supercedas be granted to the contrary of such special assises.

Where sheriff is named disseisor by collusion, the writ to be abated.

XIII. *And be it further enacted by the authority aforesaid,* That if in any writ of assise, the sheriff of the same county is or shall be named one of the disseisors, and the tenants in the same assise, or any of them, will aver that the said sheriff is not, nor every was disseisor nor tenant of the tenements in demand, but was named a disseisor by collusion, the averment shall be received; and if it be found by the said assise, that the said sheriff is not, nor ever was disseisor nor tenant of the tenements in demand, but was named disseisor by collusion, then the justices shall cause the said writ so purchased, or to be purchased, in form aforesaid, to be abated and quashed; and the plaintiff or plaintiffs shall pay double costs thereupon to be taxed.

Assise of novel disseisin to be granted for rent of tenements in different counties.

XIV. *And be it further enacted by the authority aforesaid,* That an assise of novel disseisin may, from henceforth, be granted of rent in arrear, due of tenements in divers counties, to be holden in the confine of the counties within which the tenements be; and thereupon the assise shall be taken and tried by jurors of the said counties, in the same manner as ought to be done of a common of pasture in one county, and appendant to tenements in another county; and that as well of disseisins done in times past, as of disseisins yet to be done; and that writs thereupon, at the suit of the plaintiff, be made from henceforth in the chancery in due form, without any manner of contradiction; but in all such assises, one at the least of the justices of the supreme court, shall be named as one of the justices to take such assises.

XV. And whereas in cases where dower is or shall be demanded, of lands or tenements recovered against the husband by default or covin, and when the wife being endowed, loseth her dower by default, and when tenants by the courtesy, or for term of life, must demand their land lost by default, divers actions do concur, and when it is come to that point that the tenants must be compelled to shew their right, they cannot make answer without them to whom the reversion or remainder of right belongeth; Therefore, *Be it further enacted by the authority aforesaid,* That it shall be

Remedy for tenants in dower, and by the courtesy, to recover their lands lost by default.

lawful for them to vouch to warranty, as if they were tenants, if they have a warranty: And when the warrantor hath warranted, plea, shall pass between him or her that is seised, and the warrantor, according to the tenor of the writ that the tenant purchased before, and by which he or she recovered by default. And so from many actions, they shall at length resort to one judgment, which is this; that the demandant shall recover his or her demand, or that the tenant shall go quit; and if the action of such a tenant who is compelled to shew his right, be by writ of right, although the great assise cannot be joined by the words accustomed, yet it shall be joined by words convenient; for when the tenant in that he or she sheweth his or her right, which belongeth to him or her by the writ which he or she before purchased instead of a demandant, the warrantor may well defend the right of the tenant who is

accounted in place of the demandant as aforesaid, and put himself or herself upon the great assise, and pray recognition to be made whether he or she hath more right to the land in demand, than the party aforesaid; or otherwise the great assise may be joined thus: Such an one defends the right, and so the warrantor may defend the right, and acknowledge the seisin of his or her ancestor, and put himself or herself upon the great assise, and pray recognition to be made whether he or she hath more right in the land, as in that whereof he or she enfeoffed such a one, or that such a one released and quit claimed, than the aforesaid party.

XVI. *And be it further enacted by the authority aforesaid,* That when any person not present in court, shall be vouched to warranty in a plea of land or tenement, the party so vouched shall have reasonable summons, according to the discretion of the justices; and if the demandant will aver that the person vouched is dead, or that there is no such person, such averment shall be received and tried without delay.

XVII. *And be it further enacted by the authority aforesaid,* That in writs concerning possession, whereby lands or tenements are demanded, which ought to descend, remain, re-
Proceedings in cases of voucher, and where it is counter pleaded.
 vett or fall, by the death of any ancestor, or otherwise, if the tenant vouch to warranty, and the demandant counterpleadeth him or her, and will aver by assise, or by the country or otherwise, as the court will award, that the tenant, or his or her ancestor or predecessor, whose heir he or she is, was the first that entered after the death of him or her of whose seisin he or she demandeth, the averment of the demandant shall be received, if the tenant will abide thereupon; and if not, he or she shall be further compelled to another answer, if he or she have not his or her warrantor present, who will warrant him or her freely, and immediately enter into the warranty; and the demandant shall have the like exceptions against the warrantor, if he or she will vouch further, as he or she had before against the first tenant; and in all manner of writs of entry, which make mention of degrees, none shall vouch out of the line. And further, That as well in the writs aforesaid, as in writs of right, if the tenant vouch to warranty, and the demandant will counterplead him or her, and be ready to aver by the country that he or she, who is so vouched to warranty, nor his or her ancestors or predecessors, had never seisin of the land or tenement demanded, nor fee nor service by the hand of his or her tenant, or his or her ancestors or predecessors, since the time of him or her on whose seisin the demandant declareth, until the time that the writ was purchased, and the plea moved, whereby he, she or they might have enfeoffed the tenant, or his or her ancestor or predecessors, then, whether the party vouched be present or absent, the averment of the demandant shall be received, if the tenant will abide thereupon; if not, the tenant shall be further compelled to another answer, and the demandant shall have his or her exceptions against the warrantor, as he or she had before against the first tenant. And further, If the tenant hath a deed that compriseth warranty of another man who is bound in none of the cases before mentioned, to the warranty of an older degree, his or her recovery by a writ of warranty of charters out of the chancery, shall be saved to him or her, at what time soever he or she will purchase it, but the plea shall not be delayed therefore.

XVIII. *And be it further enacted by the authority aforesaid,* That when any person shall demand lands or tenements against another, and the party impleaded voucheth to warranty, and the warrantor denieth his or her warrant-

ty, and it be found that the vouchee is bound to warranty by the law and custom of this state, then, in like manner as the tenant should lose the land or tenement in demand, in case where he vouched, and the vouchee could discharge himself of the warranty, in the same manner shall the warrantor lose, in case where he or she denieth his or her warranty, and it be tried against him or her, that he or she is bound to warranty. And further, That in all cases where an inquest shall be depending between the tenant and the warrantor, and the demandant will require a writ to cause the jury to come, it shall be granted.

Manner of proceeding in cases of re-disseisin.

XIX. *And be it further enacted by the authority aforesaid,* That if any person be disseised of his or her freehold, and shall recover seisin by assise of novel disseisin, or by confession of them that did the disseisin, and after the plaintiff hath had seisin delivered by the sheriff, if the said disseisors do again disseise the same plaintiff of the same freehold, and thereof be convicted, the plaintiff shall recover double damages, and the re-disseisors shall be also punished by fine and imprisonment, and shall be forthwith taken and committed, and kept in gaol until they shall have paid such damages and fine, and be thence delivered by due course of law. And the manner of proceeding in such case, shall be as follows: When the plaintiff shall come to the chancery, he or she shall have a writ directed to the sheriff, in which must be contained the plaint or disseisin upon the disseisin, and therefore it shall be commanded to the sheriff, that, taking with him the coroner of the county, or one of them, if there be more than one in the same county, and two or more justices of the peace in the same county, he go in his proper person, to the tenement or pasture whereof the plaint had been made, and before them, by the first jurors, and other neighbours and lawful men, if the first recovery was by verdict, if not, then by neighbours and lawful men, he diligently thereof make inquisition; and if they find the plaintiff disseised again as aforesaid, then the sheriff shall do according to the provision aforesaid; but if it be found otherwise, then the plaintiff shall be amerced, and the others shall go quit. But no sheriff shall proceed in any such plaint, without a special writ. And in the same manner it shall be done to them who shall recover their seisin of any lands or tenements, by verdict, default, reddition or otherwise, in any real action, in any court of record, if they be afterwards disseised by the first deforceors, against whom they shall have recovered.

Remedy where rents or services are withheld for two years, by writ of cessavit

XX. *And be it further enacted by the authority aforesaid,* That if any person hath demised, or shall demise his or her lands, to any other person, and to his or her heirs, rendering a certain annual rent for the same, and he or she who holdeth the land so charged, letteth it lie fresh, so that the party can find no distress there by the space of two years, to compel the farmer to render, or to do as is contained in the writing or lease; then the two years being passed, the lessor or grantor, or his heirs or assigns, shall have an action to demand the land in demesne, by a writ out of the chancery in this form.

COMMAND *A*, That justly and without delay, he render to *B*, one messuage, with the appurtenances, in *C*, which the same *B* demised to the aforesaid *A*, rendering therefore, yearly, to the same *B* (such a certain rent) and which to him ought to revert, because the aforesaid *A*, in paying the aforesaid rent, hath ceased by two years, as he saith.

And if he or she against whom the land is demanded, come before judgment and pay the arrearages, and the damages and costs, and find surety,

such as the court shall think sufficient, to pay the rent from thenceforth, as is contained in the writing or lease, he or she shall keep the land ; but if he or she neglect until it be recovered by judgment, he or she shall be barred for ever ; and, in like manner, if any withhold from any person, of whom he or she holds, his or her due and accustomed services, by two years, the person to whom the same is or shall be due, shall have an action to demand the lands in demesne, by a writ in this form :

COMMAND *A*, That justly and without delay, he render to *B* (such a tenement) which the aforesaid *A* holds of him by such certain service, and which to the aforesaid *B* ought to revert, because the aforesaid *A*, in doing the service aforesaid, hath ceased by two years, as he saith.

And further, That as well in the case of rent, as in the cases of services, writs of entry shall be made as aforesaid, for the heirs of the demandant, and against the heirs of the tenant, and against them to whom such land shall be aliened.

Where a view of the land demanded shall be granted and where not. XXI. *And be it further enacted by the authority aforesaid*, That from henceforth view shall not be granted to the tenant, but in case where a view of the land is necessary ; and that if one lose land by default, and he or she who loseth shall purchase a writ to demand the same land, and in case where one by an exception dilatory abateth a writ after the view of the land, as by non-tenure, misnaming of the town, or such like, and the demandant purchaseth another writ ; in these cases the view shall not be granted, if the party had view in the first writs : And in a writ of dower, where the dower in demand is of land that the husband aliened to the tenant, or his or her ancestors, where the tenant ought not to be ignorant what land the husband did alien to him or her, or to his or her ancestors, though the husband did not die seised, yet the view shall not be granted to the tenant. And in a writ of entry, that is abated because the demandant misnamed the entry, if the demandant purchaseth another writ of entry, if the tenant had view in the first writ, he shall not have it in the second. And in all writs where lands are or shall be demanded by reason of a demise made by the demandant, or his or her ancestor, to the tenant, and not to his or her ancestor, as that which the demandant, of his or her ancestor, being within age, not of sound mind, or in prison, and such like, demised to the tenant, view shall not be granted ; but if the demise was to the ancestor of the tenant, view shall be granted, as hath been done before.

In writs of cousinage, aile and besaile. XXII. *And be it further enacted by the authority aforesaid*, That in all writs of cousinage, aile and besaile, if the tenant will plead that the plaintiff is not the next heir of the ancestor, by whose death he or she demandeth the land, such plea shall be received, and the matter enquired of, and the court shall proceed to judgment, according to the verdict thereupon to be given.

XXIII. *And be it further enacted by the authority aforesaid*, That no writ shall be abated by the exception of non-tenure of parcel, but for the quantity of the non-tenure so alledged.

XXIV. *And be it further enacted by the authority aforesaid*, That if any person shall purchase a writ of novel disseisin, and he or she against whom the writ is brought as principal disseisor, dieth before the assise be passed, then

the plaintiff shall have his or her writ of entry upon disseisin, against the heir or heirs of the disseisor or disseisors, of what age soever such heir or heirs may be; and likewise the heir or heirs of the disseisee, shall have his, her or their writ or writs of entry, against the disseisors, or their heirs, of what age soever they be, if the disseisee die before he hath purchased his writ, so that for the non-age of the heirs of the one part or other, the writ shall not be abated, nor the plea delayed.

XXV. *And be it further enacted by the authority aforesaid,* That if a child within age be holden from his or her inheritance, after the death of his or her father, mother, brother, sister, cousin, grand father or great-grand-father, whereby such infant is driven to his or her writ, and his or her adversary cometh into the court, and for answer alledgeth a seoffment, or pleadeth some other thing by which the court would formerly award the age, and defer the inquest until the full age of the infant, from henceforth, in every such case, the inquest shall not be deferred until the full age of the infant, but shall pass as if he or she was of full age.

XXVI. *And be it further enacted by the authority aforesaid,* That all tenants in assise of novel disseisin, may either appear in person, or by attorney or bailiff, and plead in person, or make and appear and plead by their attorneys, or plead by bailiffs at their pleasure.

XXVII. *And be it further enacted by the authority aforesaid,* That the panels of the assises shall, in all cases, be arrayed, and a copy thereof delivered by the sheriff, or his deputy, to the plaintiffs, tenants and defendants, if they demand the same, at least six days before the circuit court, or session of the justices at which the same shall be returnable, upon pain that every sheriff or other officer neglecting his duty herein, shall forfeit, for every offence, to the party grieved, the sum of twenty pounds; to be recovered, with costs of suit, in any court of record, by action of debt, bill, plaint or information.

XXVIII. *And be it further enacted by the authority aforesaid,* That the plaintiff in every assise may, from henceforth, at his pleasure, sever and abridge his or her plaint of a moiety, or any other part or parts whereunto any bar is or shall be pleaded, in such like manner as he or she might do in case the pleas in bar had been made, and divided to any certainty or number of acres in the plaint; and that the plaint for the residue of the part or parts of the lands, not abridged, shall be and stand good and effectual in the law.

XXIX. *And be it further enacted by the authority aforesaid,* That from the time any plea shall be moved by writ, the tenant shall not make any waste or estrepement of land in demand, pending the suit; and if he or she do, the court wherein the plea depends, shall cause the land in demand to be kept at the suit of the demandant.

XXX. *And be it further enacted by the authority aforesaid,* That all writs of summons, and attachments, and other process in pleas of lands, shall, from henceforth, have full fifteen days at the least between the days of the test and the days of the return thereof. And further, That in all writs of dower, after issue joined, it shall not be needful or requisite to have above fifteen days between the test and return of the venire facias, or any other process to be sued out for the trial of the said issue, but that the writ of venire facias, and other process after issue joined, and until judgment be given, having only fifteen days between the test and the return thereof, shall be good and effectual. And also, That all writs of summons to the warranty, and all other process in any real action, being tested the last day, or any other day in any term, and returnable the first day, or any other day in the next succeeding term, shall be good and effectual,

Summons in real actions to be proclaimed at the church door. XXXI. And for avoiding secret summons in real actions, without convenient notice to the tenants of the freehold ; *Be it further enacted by the authority aforesaid,* That after every summons upon the lands in any real action, and fourteen days at the least before the day of the return thereof, the sheriff to whom such summons shall be directed, shall make, or cause proclamation of the same summons to be made, at or near the most usual door of the church of the town or place where the land whereupon the summons was made, doth lie, upon a Sunday, immediately after divine service and sermon, if any there be ; and if there be more than one church in such town, then such proclamation shall be made, in form aforesaid, at or near to the most usual door of the church nearest to the said lands ; and if there be no church in such town, then such proclamation shall be made, in form aforesaid, at or near to the most usual door of the church in the same county nearest to the said land ; and such proclamation so made as aforesaid, shall be returned, together with the names of the summoners ; and if such summons shall not be proclaimed and returned as aforesaid, then no grand cape to be awarded, but an alias or pluries summons, as the cause shall require, until a summons and proclamation shall be duly made and returned as aforesaid.

XXXII. And for avoiding delays in all manner of writs and attachments ; *Be it further enacted by the authority aforesaid,* That if the tenant or defendant, after the first attachment returned, make default, the great distress shall be immediately awarded, and the tenant or defendant shall be distrained from time to time, until he or she do appear, or comply with the purpose of such writ. And if the sheriff do not make a sufficient return to any such writ, at the day of the return thereof, he shall be amerced.

XXXIII. And whereas the process by distringas as heretofore used, is dilatory and expensive ; For remedy whereof, *Be it further enacted by the authority aforesaid,* That the court out of which the writ proceeds, may order the issues levied from time to time to be sold, and the monies arising thereby to be applied to pay such costs to the plaintiff as the court shall think just, under all the circumstances to order, and the surplus to be retained until the defendant or tenant shall have appeared, or other purpose of the writ be answered ; and when the purpose of the writ is answered, that then the said issues shall be returned, or if sold, what shall remain of the money arising by such sale, shall be repaid to the party distrained upon.

XXXIV. And because such things as be recorded before the chancellor and the judges and justices who have record, and be inrolled in their rolls, process of plea ought not to be made by summons, attachment, view of land and other solemnities of the court, as hath been used to be done of bargains and covenants made out of court ; Therefore, *Be it further enacted by the authority aforesaid,* That from henceforth those things which are found in-

In what cases seise facias to issue. whether they be recoveries or judgments had, or contracts, covenants, obligations, services or customs acknowledged, or other thing whatsoever inrolled, wherein the court, without offence of the law and custom, may execute their authority, shall have such force that the party, at any time within the year after the same are or shall be had, levied or acknowledged, shall have a writ of execution of the same ; and when the fine, judgment, recovery or recognizance be levied, had or made, of a further time passed, the sheriff shall be commanded that he make known to the party of whom it is complained, that he or she be before the justices or court at a

certain day, to shew if he or she have any thing to say why such matters inrolled or contained in the fine, ought not to have execution ; and if he or she do not come at the day, or do come and can say nothing why execution ought not to be done, the sheriff shall be commanded to cause the thing inrolled or contained in the fine, to be executed.

XXXV. *And be it further enacted by the authority aforesaid, That where a verdict hath been or shall be found in assise, or in any other action whatsoever, and the parties have been or shall be adjourned upon difficulty in law upon the matter so found, the plaintiff shall be non-suited, if the verdict pass against him or her.*

C H A P. LIII.

† 8th sess. ch. 27. *An ACT to amend an Act, entitled, † "An Act for making Process in Courts of Equity effectual against Mortgagers who abscond, and cannot be served therewith, or who refuse to appear.*

Passed 13th March, 1787.

WHEREAS in and by the act, entitled, an act for making process in courts of equity effectual against mortgagers who abscond, and cannot be served therewith, or who refuse to appear, passed the 7th of March, 1785, it is directed, That before any decree shall be made on any bill therein mentioned, the court shall cause the mortgaged premises to be appraised, on oath, by two indifferent persons to be appointed by the court, that the value of the same may be known by the court, as nearly as may be, before the decree be made : And whereas it is found by experience, that in most cases the causing the mortgaged premises to be appraised in manner aforesaid, before any decree shall be made, is attended with delay and considerable expence, and no valuable purpose answered thereby ; Therefore,

Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That it shall and may be lawful for the chancellor to decree and order a sale of any such mortgaged premises, in pursuance of the said act, without any such appraisement as aforesaid, except in such cases where he shall judge the same to be necessary ; any thing in the aforesaid act to the contrary notwithstanding.

C H A P. LIV.

‡ 9th sess. ch. 24. *An ACT to amend an Act, entitled, ‡ "An Act for Relief against absconding and absent Debtors.*

Passed 13th March, 1787.

WHEREAS doubts may arise upon the said act, whether deeds executed by the trustees, and proceedings carried on against fraudulent, absconding or concealed debtors, after their decease, are valid in the law :

Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That in

Proceedings against all cases, as well where any such debtor or debtors shall have absconding and absent died, as where any such debtor or debtors shall die, after debtors, not to be discontinued by debtor's death. the time fixed for such debtor or debtors appearance, by the order or notification of the judge before whom the proceedings were had, shall have expired, the proceedings shall not be discontinued

by the death of such debtor or debtors, but may be carried on to a final conclusion, as if the said debtor or debtors had remained in full life ; and all such proceedings, and all deeds executed or to be executed in pursuance thereof, are hereby declared as legal as if executed whilst the said debtor or debtors were living.

C H A P. LVI.

An ACT for making Lands and Tenements, liable to be sold by Executions for Debt, and for the more easy Discovery of Judgments, and the better Security and Relief of Purchasers and Creditors.

Passed 19th March, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That all and singular the lands, tenements and real estate of every debtor, shall be, and hereby are made liable to be sold upon executions to be issued by virtue of any judgment heretofore had, or hereafter to be had, in any court of record, against such debtor, for the payment and satisfaction of the debt or damages so recovered, or to be recovered.

Time of signing judgment to be set down on the margin of the record, &c. II. *And be it further enacted by the authority aforesaid,* That every judge or officer of any court of record, who shall sign any judgment, shall, at the time of signing the same, without any fee for doing the same, set down the day and year of his signing the same judgment, upon the margin of the roll or record where the same judgment shall be entered ; and that the clerks of the said respective courts shall mark upon the back of every roll or judgment filed in their respective offices, the time of filing the same. And further, That no

Judgments to affect lands from the time of filing records. judgments shall affect any lands or tenements as to purchasers or mortgagees, or have any preference against heirs, executors or administrators, in their administration of their ancestors, testators or intestates estates, but from the time of the actual filing of the roll or record of the same judgment in their respective offices, after the same shall have been signed as aforesaid.

III. *And be it further enacted by the authority aforesaid,* That the several and respective clerks of the several and respective courts of record in this state, shall, before the last day of the term or court next after the first day of July, in the present year of our Lord one thousand seven hundred and eighty-seven, and so in every term, or at every court, or within six days thereafter, make or cause to be made and put into an alphabetical docket, by the name or names of the party or parties, against whom any judgment shall be entered, a particular of all judgments by confession non sum informatus, or nihil dicit, and upon verdicts, writs of enquiry, demurrer and every other judgment, for debt or damages, entered in the said respective courts of the term, or at the court preceding ; which shall contain the name and names of the plaintiff and plaintiffs, and the name and names of the defendant and defendants, his, her or their place or places of abode, and title, trade or profession, if any such be in the record of such judgment, and the debt, damages and costs recovered thereby ; and the said respective dockets shall be fairly put into and kept in books, in the respective offices of the said respective clerks, to be searched and viewed by all persons, at reasonable times, upon pain that every clerk of the said respective courts, shall respectively, for every term or court

in which he shall omit or neglect to do his duty in the premises, forfeit the sum of one hundred pounds, the one moiety to the party aggrieved, and the other moiety to him or them who shall sue for the same; to be recovered, with costs of suit, in any court of record, by action of debt, bill, plaint or information. And further, That no judgment, not docketed and entered in the books as aforesaid, shall affect any lands or tenements, as to purchasers or mortgagees, and have any preference against heirs, executors or administrators, in their administration of their ancestors, testators or intestates estates.

IV. *And be it further enacted by the authority aforesaid,* That the day of the month, and year of the enrollment of recognizances, shall hereafter be set down in the margin of the roll where the same recognizances are enrolled; and that no recognizance shall bind any lands, tenements or hereditaments, in the hands of any purchaser or mortgagee, bona fide, and for valuable consideration, but from the time of such enrollment.

Goods not bound by writ of execution but from the delivery thereof to the sheriff. V. *And be it further enacted by the authority aforesaid,* That no writ of execution shall, from henceforth, bind the property of the goods of any person against whom such writ of execution shall be sued forth, but from the time that such writ shall be delivered to the sheriff, under sheriff, coroner or other officer, to be executed: And for the better manifestation of the said time, the sheriff, under sheriff, coroners and other officers, their deputies and agents, shall upon the receipt of any such writ, without fee for doing the same, indorse upon the back thereof, the day of the month and year when he or they received the same.

Plaintiff may have execution against the body or estate of the debtor; &c. VI. *And be it further enacted by the authority aforesaid,* That where any debt hath been, or shall be recovered or acknowledged, or damages adjudged or awarded, in any court of record, it shall from henceforth be lawful for him, her or them, who shall sue for such debt or damages, to have an execution against the body of such debtor, or a writ commanding the sheriff or other proper officer, to cause such debt and damages to be made of the goods and chattels of such debtor, or person chargeable with such debt, in the usual form, or of the goods and chattels, lands and tenements of the debtor, or person chargeable with such debt, in the form herein after mentioned; but no execution shall be issued against the body, or the proper goods and chattels, lands and tenements of any heir, devisee, executor or administrator, unless he, she or they, shall have made their estate liable to the same debt, by false pleading or otherwise. And further, That every person who hath been, or shall hereafter be taken or arrested, by virtue of any such writ of execution, against his or her body, for any such debt or damages, by any sheriff, or other officer to whom any such writ hath been or shall be directed; and every person who hath been or shall be committed to the custody of any sheriff or other officer, in execution for any such debt or damages, shall be safely kept in prison, in close and secure custody, without bail or mainprize, living at his or her own costs, until he or she shall satisfy and pay such debt and damages; and if any such sheriff or other officer, shall permit any such person so taken, arrested or committed, or hereafter to be taken, arrested or committed, to go out of prison, or be at large, by bail, mainprize or otherwise, without the assent and agreement of the plaintiff, such sheriff or other officer, shall thereby become answerable to the plaintiff for the debt and damages for which such person was taken, arrested or committed; and the plaintiff may recover the same with costs, by action of debt, bill or plaint, against such sheriff or other officer.

VII. *And be it further enacted by the authority aforesaid,* That in every writ of execution, hereafter to be issued against lands and tenements, the sheriff, or other officer to whom such writ shall be directed, shall be commanded, that of the goods and chattels of the person or persons against whom such execution issues, in his county or bailiwick, he cause to be made, the debt, damages and costs, or sum of money in such execution specified; and if sufficient goods and chattels of such person or persons cannot be found in his bailiwick or county, that then he cause the said debt, damages and costs, or sum of money, to be made of the lands and tenements whereof such person or persons were or was seized, on the day when the same lands became liable to such debt, damages or sum of money, specifying the day particularly, or at any time afterwards, in whose hands soever the same may then be. But when any such execution shall be issued, against any person or persons, as tenants, or as heirs or devisees of any person deceased, unless they shall have made their estate liable by false pleading or otherwise, such writ shall only command the sheriff or other officer to whom the same shall be directed, that of the lands and tenements, whereof the ancestor, testator, or person deceased, was seized on the day the same lands became liable as aforesaid, or at any time afterwards, or at the time of his or her death, as the case may require, he cause to be made, the debt, damages and costs, or sum of money in the same writ specified. And further, that where lands

Remedy where several are bound by judgment, and one pays more than his share.

or tenements, in the hands of several persons, are or shall be liable to satisfy any judgment, or debt of record, and the whole, or more than a due proportion shall be paid by, or levied upon the lands of any one or more of them, the

person or persons so aggrieved, his, her or their executors or administrators, may have a writ out of chancery, setting forth his, her or their grievance, directed to the justices of the supreme court, commanding them to hear the complaint, and to do justice to the parties; and the justices of the supreme court shall thereupon cause the party or parties, against whom such complaint shall be made, to be warned to be before them, at a certain day, to shew, if he, she or they have any thing to say, why his, her or their lands should not be charged with a due proportion of the monies so paid or levied; and if he, she or they do not come at the day, or do come and can say nothing why his, her or their lands should not be charged with a due proportion of the monies so paid or levied, then the sheriff of each county, in which such lands and tenements so chargeable, are or shall be situated, shall be commanded, that by the oath of twelve good and lawful men of his county or bailiwick, he diligently inquire, what was the true value of the lands and tenements in the hands of each of the parties respectively, in his county or bailiwick, so chargeable, at the time they became chargeable as aforesaid; and that he send the inquisition which he shall take thereof, before the same justices, at a certain day, under his seal, and the seals of those by whose oath he shall take such inquisition: And when the value of the whole lands and tenements so chargeable shall be found, the justices shall apportion the money so paid or levied, together with the plaintiff's damages and costs of suit, among the several holders of the said lands and tenements so chargeable, according to equity and justice; and shall cause so much as each person ought to pay, to be levied of the said lands and tenements, so held by him or her, and to be paid to the plaintiff or plaintiffs. And further, If any purchaser of any

Remedy where purchasers upon execution is evicted.

lands or tenements, upon any execution heretofore issued, or hereafter to be issued, or his or her heirs or assigns, shall

be evicted on account of any irregularity in the proceedings, or want of title in the person or persons against whom such execution issued, or by reason of any prior incumbrance, then, and in every such case, the person or persons so evicted, his, her or their executors or administrators, may have a writ out of the chancery, setting forth his, her or their grievance, directed to the justices of the supreme court, commanding them to hear the complaint, and to do justice to the parties, and the justices of the supreme court shall thereupon cause, as well the party or parties at whose suit, or for whose benefit the same lands and tenements were sold, as the party against whom the execution issued, or their respective heirs, devisees, executors or administrators, to be warned to be before them at a certain day, to shew, if they or either of them, have any thing to say, why the plaintiff should not be restored to the monies paid for the said lands and tenements; and if they do not come at the day, or do come and can say nothing why the plaintiff should not have restitution of the said monies, the plaintiff shall have judgment and execution for the same, together with his costs of suit, against him, her or them, who ought to repay the same, and the party in whose favour such former judgment was had, or his heirs, devisees, executors or administrators, who may be charged by such judgment of restitution, shall thereupon have such further judgment and execution, as justice shall require.

VIII. *And be it further enacted by the authority aforesaid,*
How prisoners are to be kept, &c. That all prisoners, either upon contempt or mesne process, or in execution, who are or shall be committed to any prison, shall be actually detained within such prison, until they shall be from thence discharged by due course of law. And if at any time the keeper or keepers of any prison, shall permit or suffer any prisoner committed to his or their custody, either upon contempt or mesne process, or in execution, to go or to be at large, out of his or their respective prisons, except by virtue of some writ of habeas corpus, or rule of court (which rule of court shall not be granted, but on motion made, or petition read in open court) every such going or being out of the said prison, shall be adjudged and deemed, and is hereby declared to be an escape.

IX. *And be it further enacted by the authority aforesaid,*
Penalty on sheriffs for voluntary escapes. That if any sheriff, or keeper of any prison, shall take any sum of money, reward or gratuity whatsoever, or any security for the same, to procure, assist, connive at, or permit any escape of any prisoner in his or their custody, and shall be thereof lawfully convicted, every such sheriff or keeper, shall, for every such offence, forfeit the sum of five hundred pounds, and his said office, and be forever after incapable of executing any such office.

X. *And be it further enacted by the authority aforesaid,* That no re-taking on fresh pursuit, shall be given in evidence on trial of any issue in any action of escape, against any sheriff, or keeper of any prison, unless the same shall be specially pleaded; nor shall any special plea be taken, received or allowed, unless oath be made in writing by such sheriff, or keeper of any prison, against whom such action shall be brought, and filed with such plea, that the prisoner for whose escape such action is brought, did, without his consent, privity or knowledge, make such escape; and if such affidavit shall at any time afterwards appear to be false, and such sheriff, or keeper of any prison shall be convicted thereof, by due course of law, he shall forfeit the sum of five hundred pounds.

If the debtor dies in execution, plaintiff may have execution against his estate, &c.

XI. *And be it further enacted by the authority aforesaid,* That the party or parties at whose suit, or to whom any person doth or shall stand charged in execution, for any debt or damages recovered, his, her or their executors or administrators may, after the death of the said person so charged and dying in execution, lawfully sue forth and have new execution against the goods and chattels, lands and tenements, or any of them, of the person so deceased, in such manner and form, to all intents and purposes, as he, she or they, or any of them, might have had by the laws and statutes of this state, if such person so deceased had never been taken or charged in execution; but no person or persons, his, her or their executors or administrators, at whose suit or suits any such party shall be in execution, and die in execution, shall have or take any new execution against any the lands, tenements or hereditaments of such party so dying in execution, which shall at any time after the judgment or judgments against such party so dying, and by reason whereof such party was taken or charged in execution, be by him or her sold bona fide, for the payment of any of his or her creditors, and the money which shall be paid for the lands so sold, either paid or secured to be paid to any of his or her creditors, with their privity and consent, in discharge of his, her or their due debts, or of some part thereof; nor against any lands, tenements or hereditaments, of any such person so dying in execution, which shall have been sold by reason of any other judgment against the said party so dying in execution.

XII. *And be it further enacted by the authority aforesaid,* That if any person who is or shall be committed in execution to any prison, shall escape from thence, by any ways or means howsoever, the creditor or creditors at whose suit such prisoner was charged in execution, at the time of his or her escape, shall or may retake such prisoner, by any new capias, or capias ad satisfaciendum, or sue forth any other kind of execution on the judgment, as if the body of such prisoner had never been taken in execution.

XIII. *And be it further enacted by the authority aforesaid,* That if any person hath been, or shall be condemned in any court of record, in this state, and hath been, or shall be, by virtue of any such condemnation, committed to prison, there to remain until he or she shall make satisfaction to the party to whom he or she is or shall be condemned, and any writ or writs shall be granted, commanding the sheriff, or keeper of the prison where such prisoner is holden, to have the body of such prisoner, with the cause of his or her imprisonment, in the chancery, or in any other court, or before the chancellor, or before any judge or justice, and it be returned upon the said writ or writs, that such prisoner is condemned by judgment given against him or her, then, and in every such case, such prisoner shall be immediately remanded, where he or she shall remain continually in prison, according to the law and custom of this state, without being let to go by bail or mainprize, against the will of the party to whom such prisoner is or shall be condemned, until satisfaction be made to him or her for the sum adjudged.

CHAP. LVII.

An ACT for granting and securing to John Fitch the sole Right and Advantage of making and employing, for a limited Time, the Steam-Boat by him lately invented.

Passed 19th March, 1787.

WHEREAS John Fitch, of Buck's county, in the state of Pennsylvania, hath represented to the legislature of this state, that he hath construct-

ed an easy and expeditious method of impelling boats through the water by the force of steam, praying that an act may pass, granting to him, his executors, administrators and assigns, the sole and exclusive right of making, employing and navigating all boats impelled by the force of steam or fire, within the jurisdiction of this state, for a limited time : Wherefore, in order to promote and encourage so useful an improvement and discovery, and as a reward for his ingenuity, application and diligence ;

I. *Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That the said John Fitch, his heirs, executors, administrators and assigns, shall be, and they are hereby vested with the sole and exclusive right and privilege of constructing, making, using, employing and navigating all and every species or kind of boats, or water craft, which may be urged or impelled through the water by the force of fire or steam, in all creeks, rivers, bays and waters whatsoever, within the territory and jurisdiction of this state, for and during the full end and term of fourteen years, from and after the present session of the legislature.

II. *And be it further enacted by the authority aforesaid,* That if any person or persons whomsoever, without being properly authorized by him the said John Fitch, his heirs, executors or administrators, shall make, use, employ or navigate any boat or water craft, which shall or may be urged, impelled, forced or driven through the water by the force, power or agency of fire or steam as aforesaid, within the territory or jurisdiction of this state, every person or persons so offending against the tenor, true intent and meaning of this act, for each and every such offence, shall forfeit and pay unto the said John Fitch, his heirs, executors or administrators, or to such other person or persons as he the said John Fitch, his heirs or assigns, shall authorize and empower for that purpose, the sum of one hundred pounds, to be recovered by action of debt, in any court of record within this state, wherein the same may be cognizable, with costs of suit ; and shall also forfeit to him the said John Fitch, his heirs or assigns, all such boats or water craft, together with the steam engine, and all the appurtenances thereof, to be recovered in manner aforesaid, with costs of suit.

III. *Provided always, and be it further enacted by the authority aforesaid,* That neither this act, nor any clause, matter or thing therein contained, shall be taken, deemed or construed to prohibit or prevent any person or persons from making, using, employing or navigating, within this state, any kind of boats or water craft, heretofore invented or hereafter to be invented, on any other principles, construction or model, which may be urged, impelled or driven along through the water, by any other power, force, agency or means, except fire or steam.

CHAP. LVIII.

An ACT for the better extinguishing of Fires in the City of New-York.

Passed 19th March, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That it shall and may be lawful to and for the mayor, aldermen and commonalty of the city of New-York, in common council convened, or the major part of them, and they are hereby required, to nominate and appoint a sufficient number of strong, able, discreet, honest and sober men, willing

to accept, not exceeding three hundred in number, of the inhabitants, being freeholders or freemen of the said city, to have the care, management, working and using the fire engines, and the other tools and instruments now provided, or hereafter to be provided, for extinguishing of fires within the said city; which persons, so to be nominated and appointed as aforesaid, shall be called, The Firemen of the City of New-York; and who, with the engineers of the same city, are hereby required and enjoined to be ready at all times, as well by night as by day, to manage, work and use the same fire engines, and other the tools and instruments aforesaid, so provided and to be provided, for extinguishing of fires in the same city.

II. And in order that the firemen so to be nominated and appointed as aforesaid, may be diligent and vigilant in the execution of their duty; *Be it further enacted by the authority aforesaid*, That the persons so to be nominated and appointed firemen as aforesaid, and each and every of them, from time to time, during their continuance in that office, and no longer, shall be, and hereby are declared to be freed, exempted and privileged from serving in the office of constable, and from being impannelled or returned upon any juries or inquests, and of and from militia duty within the said city, except in cases of invasion, or other imminent danger; and that the names of all firemen, to be nominated and appointed by virtue of this act, shall, from time to time, be registered and entered with the clerk of the peace of the said city; and his certificate shall be sufficient evidence, in all courts and cases, of such privilege and exemption. And further, That it shall and may be lawful to and for the mayor, aldermen and commonalty of the said city, in common council convened, or the major part of them, to remove and displace all or any of the firemen now appointed, or so as aforesaid to be nominated and appointed, by virtue of this act, when and as often as they shall think fit, and others in the room or places of such as they shall so remove or displace, to nominate and appoint, and so from time to time, as they the said mayor, aldermen and commonalty of the said city, in common council convened, or the major part of them, for the time being, shall think proper:

III. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful to and for the mayor, aldermen and commonalty of the said city, in common council convened, or the major part of them, to make, establish and ordain, such rules, orders, ordinances and regulations, in respect of the government, conduct, duty and behaviour of the persons to be by them, from time to time, nominated and appointed firemen, in virtue of this act, in the working, managing and frequent exercising, trying and using of the same fire-engines, tools and other instruments, and to impose and establish such reasonable fines, penalties and forfeitures upon them, or any of them, for default or neglect of the duties and services thereby to be enjoined or required from them, as the mayor, aldermen and commonalty of the same city, in common council convened, or the major part of them, shall, from time to time, think proper.

IV. *And be it further enacted by the authority aforesaid*, That upon the breaking out of any fire within the said city, the sheriff, deputy sheriffs, constables and marshals (upon notice thereof) shall immediately repair to the place where such fire shall happen, with their rods, staves and other badges of authority, and be aiding and assisting, as well in the extinguishing of the said fires, and causing the persons attending the same, to work, as in preventing any goods or household furniture from being stolen at such fires, and shall seize and apprehend all ill disposed persons whom they find stealing or

pillfering : And that the officers aforesaid shall also give their utmost assistance to the inhabitants in removing and securing their said goods and furniture ; and in the execution of the duties required from them by this act, shall, in all respects, be obedient to the orders and directions of the mayor, recorder and aldermen of the said city, or such of them as shall, from time to time, be present at such fires.

V. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the mayor, aldermen and commonalty of the said city, in common council convened, by a bye-law or bye-laws, ordinance or ordinances, by them for that purpose to be made and ordained, to direct and require the inhabitants, or owners of houses or other buildings in the said city, to furnish and provide themselves with such and so many fire-buckets, to be ready in their respective houses and other buildings, for the purposes of extinguishing fires which may happen in the said city, and to impose and establish such reasonable fines, penalties and forfeitures, for every neglect, default or disobedience thereof, as the said mayor, aldermen or commonalty of the said city, in common council convened, shall think proper.

VI. And whereas the inhabitants of the said city have, on all occasions of fire, not only cheerfully afforded their ready assistance in extinguishing the same, but have also sent out their leather fire-buckets for that purpose, many of which have, from time to time, been burnt, destroyed or lost, for which no recompence or allowance hath been provided, which may prove a great discouragement to owners of buckets in furnishing them on the like occasion for the future ; for remedy whereof, *Be it further enacted by the authority aforesaid,* That in case any person or persons shall hereafter lose any bucket or buckets, at any fire which may happen in the said city, and shall make proof before the mayor, recorder, or any one of the aldermen of the said city for the time being, of the value of such bucket or buckets, and that the same was or were actually lost or destroyed in that service ; that then, and in such case, the mayor, aldermen and commonalty of the said city in common council convened, shall, by warrant under the hand of the mayor or recorder, presiding at such common council, directed to the treasurer or chamberlain of the said city for the time being, order the value of such bucket or buckets to be paid to such person or persons so making proof of the loss thereof, out of any monies remaining in his hands for the payment of the contingent expences arising in the said city. And if any person or persons shall, at any time thereafter, be convicted of having taken a false oath touching the premises, he, she or they so offending, shall incur the penalties of wilful and corrupt perjury.

VII. *Provided always, and be it further enacted by the authority aforesaid,* That if any such bucket or buckets so proved to be lost as aforesaid, shall afterwards happen to be found, the property thereof shall thenceforward be in the mayor, aldermen and commonalty of the city of New-York, unless the owner or owners thereof will take back the same, and return the money allowed and paid to him or them for the loss thereof.

C H A P. LIX.

An ACT for the more effectual Preservation of the Public Wells and Pumps in the City of New-York.

Passed 19th March, 1787.

WHEREAS it is found by experience, that the keeping the public wells and pumps in the city of New-York, in constant repair, hath contributed to the safety of the said city, against accidents by fire : Therefore,

I. Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That it

Mayor, recorder and aldermen to appoint overseers of public pumps and wells yearly, on the first Tuesday in May. shall and may be lawful to and for the mayor, recorder and aldermen, or any five of them, whereof the mayor or recorder to be one, and they are hereby directed and required, on the first Tuesday in May next, and on the first Tuesday in May in every year thereafter, to nominate and ap-

point one or more fit person or persons for each and every of the wards of the said city, being inhabitants of the said city, and actually resident in such respective wards, to be overseers of the wells and pumps in such respective wards, for the year then next ensuing; all which persons so to be appointed as aforesaid, shall have the care and charge of all and every the public wells and pumps which now are, or hereafter shall be sunk or made in the ward for which he or they shall be so severally appointed overseers as aforesaid; of which appointment so to be made, the said mayor or recorder, with three or more aldermen, shall, within three days thereafter, send notice in writing to each and every of the said persons so by them to be appointed overseers as aforesaid. And if any public well or pump shall stand in a street where two wards do join, then the aldermen of the two wards so joining, or if they disagree, the mayor or recorder with them shall direct and appoint which of the overseers shall take the care and charge of such well or pump. And if any public well or pump shall stand in a street where three wards do join, that then the aldermen of the said wards so joining, or the major part of them, shall direct and appoint which of the said overseers shall take the care and charge of such well or pump.

II. And be it further enacted by the authority aforesaid, That each and every person so to be appointed overseer as aforesaid, shall, within eight days next after his being so appointed, and notice thereof to him given as aforesaid, cause all and every the wells and pumps whereof he is or shall be appointed overseer as aforesaid, to be viewed, examined, cleansed and put in good order and repair, and shall so keep and maintain them, from time to time, as long as he shall continue overseer thereof; and shall also, from time to time, cause new pumps to be put into such wells as the alderman and assistant of the ward shall judge necessary. And in case any one or more of the over-

In case of death or removal, others to be appointed. seers to be appointed by virtue of this act, shall remove out of the said city, or shall die before the expiration of one year next after his being appointed, or being appointed, shall refuse to act, that then, and in either of the said cases it shall and may be lawful to and for the said mayor, recorder and aldermen of the said city, or any five of them, whereof the mayor or recorder to be one, by a majority of voices, to appoint another or others in his or their room and stead, and so as often as such case shall happen. And further, that all and every the overseers to be appointed by the said mayor, recorder and aldermen, by virtue of this act, shall keep just, fair, and exact accounts, of all and every sum and sums of money, which they or any of them shall pay and expend, in, about and towards the cleansing, maintaining and keeping in good repair the wells and pumps in his or their charge.

III. And be it further enacted by the authority aforesaid, That in case any or either of the overseers so to be appointed by virtue this act, shall neglect or refuse to accept the office, or having accepted thereof, shall neglect or refuse to do his duty therein, as is required by this act, every such person shall, for every such refusal, neglect or delay, forfeit the sum of five pounds,

lawful money of this state ; to be recovered by action of debt, with costs of suit, in any court within this state, having cognizance thereof, by any person or persons who shall sue and prosecute the same to effect ; one half of which forfeiture, when recovered, shall be paid to the treasurer or chamberlain of the said city for the time being, and applied towards repairing such public wells and pumps, in the same manner as the other monies to be raised for that purpose, are directed to be appropriated, and the other half to the person who shall sue and prosecute for the same to effect as aforesaid.

IV. *And be it further enacted by the authority aforesaid,* That the overseers of the public wells and pumps in each of the wards of the said city, shall, once in every three months, render to the mayor, aldermen and commonalty of the said city of New-York, in common council convened, a just and true account upon oath, of all and every sum and sums of money by him or them respectively paid and expended, in and about the cleansing, amending and repairing the wells and pumps aforesaid, together with the vouchers or receipts for the same (to be by them inspected, examined and filed) and the said common council of the city of New-York, shall thereupon forthwith issue their warrant, to be signed by the mayor or recorder, presiding at such common council, directed to the treasurer or chamberlain of the said city for the time being, and requiring him to pay to such overseer so producing vouchers, and making oath to his account, the full amount thereof, out of any monies remaining in his hands for such purposes.

Penalty on persons maliciously damaging pumps, &c. V. And whereas divers disorderly persons have frequently been guilty of cutting well ropes, and breaking the handles of pumps, and doing other mischiefs to both : For prevention whereof for the future, *Be it further enacted by the authority aforesaid,* That if any person or persons shall wilfully or maliciously cut any of the public well-ropes, or break or injure the handles of, or do any other hurt or damage to any of the said wells or pumps, and shall thereof be convicted before the mayor, recorder, or any one of the aldermen of the said city, either by the confession of the party or parties so offending or by the oath of one or more credible witness or witnesses, he, she or they shall, for every such offence, forfeit the sum of forty shillings ; to be recovered, with costs of suit, and levied by warrant under the hand and seal of such mayor, recorder or aldermen, before whom such offender or offenders shall be convicted ; one half of which forfeiture to be paid to the treasurer or chamberlain of the same city for the time being, to be applied as aforesaid, and the other half to the person or persons who shall prosecute for the same to effect ; and upon refusal of payment of such forfeiture or forfeitures, and want of sufficient distress whereon the same can be levied, then the said mayor, recorder or alderman, before whom such conviction shall take place, is hereby empowered and required, by warrant under his hand and seal, to commit every such offender to the bridewell, or house of employment of the said city, there to remain without bail or mainprize, for the space of one month, or until such forfeiture and cost shall be paid. And if such offence shall be committed by any apprentice, servant or slave, such forfeiture shall be paid by his or her master, mistress or owner ; or in default thereof, such apprentice, servant or slave, shall be committed to the bridewell, or house of employment of the said city, in manner aforesaid.

C H A P. LXI.

An ACT for the better regulating the public Roads in the City and County of New-York.

Passed 21st March, 1787.

I. *BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That the mayor, aldermen and commonalty of the city of New-York, in common council convened, and their successors, shall be, and hereby are appointed commissioners to regulate and keep in repair, the present public roads or highways; and to lay out, regulate and keep in repair, such other public roads or highways, as shall hereafter be laid out in the said city and county.

II. *And be it further enacted by the authority aforesaid,* That the said commissioners, so as aforesaid by this act appointed, shall be, and hereby are fully authorised and empowered to widen or alter all public roads and highways, already laid out in the said city and county, to such convenient breadth, not exceeding four rods, nor less than two rods, as the said commissioners shall judge fit, to make them passable for horses and carriages. And also to lay out and make such other public roads or highways, as they shall think necessary or convenient for the said city and county, in manner aforesaid, if the owner or owners of the said lands through which such new roads are to run, or his, her or their agent, or legal representative, will, on reasonable recompence, consent to the same. And if, in widening or altering any such public road or highway now in being, or if in laying out any public road or highway hereafter, or in widening or altering the same, the said commissioners, shall take or require for such purposes the lands of any person or persons, they shall give notice thereof to the owners or proprietors of such land, or to his, her or their agent, or legal representative. And to the end that reasonable satisfaction may be made, for all such lands as shall be taken and employed for the use aforesaid, the said commissioners shall and may treat and agree with the owners and persons interested therein, or his, her or their agent, or legal representative; and if any such owners or proprietors shall refuse to treat in manner aforesaid, then, and in such case, it shall and may be lawful to and for the mayor or recorder, and any two or more aldermen, by virtue of this act, to issue a precept directed to the sheriff of the said city and county of New-York, commanding him to impanel and return, and he is hereby required to impanel and return a jury to appear before the mayor's court, at the then next meeting thereof, not less than three weeks from the date of such precept, to enquire of and assess the damages and recompence due to the owner or owners of such land; and at the same time to summon the owner or owners of such land, or his, her or their agent, or legal representative, by notice to be left at his or her last most usual place of abode, to appear before such mayor's court, on the day, and at the place of the return of such precept; which jury, being first duly sworn for that purpose, and having viewed the premises, if necessary, shall inquire of and assess such damages and recompence as they shall, under all the circumstances, judge fit to be awarded to the owner or owners of such land, according to their several and respective interests and estates of and in such land, or any part thereof, for their respective interests and estates in the same; and the verdict of such jury, and the judgment of the said mayor's court thereupon, and the payment of the sum and sums of money so awarded and adjudged to the owner or owners thereof, or tender and refusal thereof, shall be binding, to

all intents and purposes, against the said owners, and their respective heirs, executors, administrators and assigns, claiming any interest or title in or to the same land, and shall be a full authority to the said commissioners to cause the said land to be converted to and used for the purposes aforesaid; any thing herein, or in any other law contained to the contrary hereof in any wise notwithstanding.

Road to King's-bridge not to be less than four rods. III. *Provided always, and be it further enacted by the authority aforesaid,* That nothing in this act before contained, shall be deemed to authorize or require compensation to be made to any person or persons, for any lands which he, she or they shall have obtained by encroaching on such public road or highway. And provided further, That the main road or highway leading to King's-bridge, shall not be of less breadth than it is at present, nor any part thereof less than four rods wide.

Commissioners empowered to build bridges and cause ways, and make ditches. IV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the said commissioners, to cause to be made, built and erected, such and so many cause-ways and bridges, and at such places as they shall think necessary and to cause ditches from such public roads or highways to be made and cut through any person's land, where they shall judge proper, for conveying the water from, and keeping the same roads or highways dry and in good order; and from time to time to appoint one or more surveyors or overseers of the said roads or highways, and to employ labourers and workmen to make and keep the same in repair.

V. *And be it further enacted by the authority aforesaid,* That the said commissioners shall, from time to time, make regular returns in writing, of all the roads or highways by them widened, altered or laid out, to be signed by the clerk of the common council of the said city of New-York, and cause the same to be entered in the records of the same city; and that whatever the same commissioners shall do according to the power given them by this act, being so entered on record, shall be deemed good and valid, to all intents, constructions and purposes in the law whatsoever.

Penalty on persons injuring or obstructing the roads. VI. *And be it further enacted by the authority aforesaid,* That if any person or persons, shall wantonly spoil or damage any such roads, bridges or causeways, or fill up or destroy any of the ditches aforesaid, or fence across any of the said roads or highways, or erect or set up any gates thereon, or put or leave in any of them, any unnecessary obstruction, without leave of the said commissioners; or if any person or persons shall leave a dead horse, or the carcase of any other beast, or any broken carriage, in any of the said roads or highways, for any longer time than may be necessary to remove the same, or set up in or near the said roads or highways, any thing by which horses are usually affrighted, or shall, by any improper behaviour, affright any horse or traveller, on any of the same roads, or highways, every such person shall, for every such offence, forfeit and pay to the treasurer or chamberlain of the said city for the time being, the sum of forty shillings, lawful money of this state; to be recovered by the same treasurer or chamberlain, with costs of suit, by action of debt, before any court having cognizance thereof; and when recovered, to be applied to the repairing and improving the said road or highways, as the said commissioners shall think fit. And further, To prevent, as far as possible, the evasion of the good purposes intended by this act, that the owners of every dead horse or other nuisances aforesaid, left in any of the said

public roads or highways, shall be deemed to have put or left the same thereon, unless he or she prove the contrary.

VII. And be it further enacted by the authority aforesaid,
Overseers to remove nuisances. That on information being given by any person whomsoever to the overseer or overseers of the said roads or highways, of any of the said nuisances or obstructions, he shall immediately proceed to the removing thereof; and shall also use his best endeavours to discover the person or persons who committed the same, who, upon discovery, shall not only be liable to the penalties herein before appointed, but also to the costs of removing them, and a reasonable compensation to such overseer or overseers, for his or their time or trouble therein; to be recovered by such overseer or overseers, with costs of suit, before any court having cognizance thereof, as aforesaid. And further, That every overseer who shall neglect or refuse to do his duty, according to the true intent and meaning of this act, shall, for every such neglect or refusal, forfeit and pay to the treasurer or chamberlain of the said city for the time being, the sum of five pounds, like lawful money, for every offence; to be recovered, with costs of suit, and paid and applied as aforesaid.

Process against offenders to be by warrant, and on conviction, execution to be against body and goods. **VIII. And be it further enacted by the authority aforesaid,** That the first process to be issued against any offender or offenders, against this act, shall be by warrant, and not otherwise; and that the execution, on conviction, shall be against the goods and chattels of the offender or offenders; and for want of such goods and chattels, against his, her or their bodies, and shall be contained in one and the same precept, and not otherwise; any law, usage or custom to the contrary hereof in any wise notwithstanding.

Penalty for destroying trees in any road. **IX. And be it further enacted by the authority aforesaid,** That in case any person or persons shall sell or otherwise destroy any tree or trees standing on any of the said roads, or within the distance of one rod thereof, without the leave of the said mayor, aldermen and commonalty, or of the owner of such tree or trees; such person or persons shall, for every such offence, forfeit the sum of three pounds; to be recovered, paid and applied as aforesaid.

Persons going northward, to give way to those coming southward. **X. And be it further enacted by the authority aforesaid,** That in all cases of persons meeting each other on any of the said roads or highways, in carriages, waggons, carts or sleighs, those who are going out northward, shall give way to such as are coming in southward, under the penalty of forty shillings for every offence; to be recovered, paid and applied in manner aforesaid.

C H A P. LXII.

An ACT for the more easy Assessment and Collection of Taxes in the City and County of New-York.

Passed 21st March, 1787.

I. BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,

Taxes how to be rated and assessed in New-York. That all taxes to be levied within the city and county of New-York, by virtue of any law hereafter to be made and passed, whether for the use of the state, or for the maintenance of the poor, and defraying the contingent charges within the said city and county, shall be rated and assessed by the assessors, and collected by the

collectors now chosen, or hereafter to be chosen for the assessing and collecting of taxes to be raised within the said city and county; any law, usage or custom to the contrary in any wise notwithstanding.

II. *And be it further enacted by the authority aforesaid,*
Monies raised for supporting the poor, how to be applied. That all monies heretofore raised, or hereafter to be raised by tax on estates real and personal, of the freeholders and inhabitants of the said city and county, for the maintenance of the poor, and for defraying the contingent charges within the said city and county, shall be paid into the hands of the treasurer or chamberlain of the same city for the time being, and shall be applied and disposed of, for the purposes for which the same are or shall be so raised, in such proportions, and from time to time, as the mayor, aldermen and commonalty of the same city, in common council convened, by warrant under the hand of the mayor or recorder of the said city, presiding in such common council, shall direct and appoint.

III. *And be it further enacted by the authority aforesaid,*
Mayor, recorder and alderman constituted supervisors of the city. That the mayor, recorder and aldermen for the time being, of the city of New-York, or the major part of them, of whom the mayor or recorder always to be one, shall be, and hereby are declared to be the supervisors of the city and county of New-York, and shall be so considered in all laws already made, and hereafter to be made, except in such cases wherein and by this act, or any other of the laws aforesaid, it is or hereafter shall be otherwise expressly directed.

IV. *And be it further enacted by the authority aforesaid,*
What persons exempted from serving as collectors or constables. That no minister of the gospel, physician, surgeon, clerk or attorney of any court of record, or any person who shall have served as a member or clerk of the senate or assembly, or in any office in the corporation, of the said city, superior to that of collector or constable, shall be compelled to serve in the said office of collector or constable, within the said city.

C H A P. LXIII.

An ACT for altering the Charter Rights of the City of Albany.

Passed 21st March, 1787.

WHEREAS by the charter of incorporation granted to the mayor, aldermen and commonalty of the city of Albany, on the twenty-second day of July, in the year of our Lord one thousand six hundred and eighty-six, it is, among other things, granted and declared, " That the mayor or of the said city for the time being, and no other, shall have power and authority to grant licences annually, under the public seal of the said city, to all tavern-keepers, ordinary-keepers, victuallers, and all public sellers of wine, strong waters, cyder, beer, or any sort of liquor by retail, within the liberties and precincts thereof, or without the same, in any part of the county of Albany; and that the mayor of the said city for the time being, shall be the sole coroner of the said city and county of Albany. That the said mayor, aldermen and commonalty should have the exclusive right of regulating the trade with the Indians in the said city of Albany, and to the eastward, northward and westward of the said city; and that the freemen of the said city, and no other inhabitant of the colony of New-York, should be admitted to such trade. That the election of aldermen, assistants and chamberlain for the said city, shall be annually held on the feast

"of St. Michael, the archangel. That the mayor, and any three or more of the aldermen, and three or more of the assistants, shall be the common council of the said city. And that a court of common pleas shall be held once every fortnight, for the said city of Albany, before the mayor, recorder and aldermen, or any three of them, whereof the mayor or recorder to be one." And whereas the said mayor, aldermen and commonalty have, by a deed under their common seal, surrendered and yielded up to the people of this state, the said above mentioned and recited rights and privileges granted to them in and by the said charter, of the mayor of the said city, granting licences to tavern-keepers, and others as aforesaid, in any part of the county of Albany (the said city of Albany only excepted) and of the mayor, being the coroner of the said city and county of Albany; and also the right of regulating and exclusively enjoying the said trade with the said Indians, and also the right of electing the officers aforesaid, on the feast day of St. Michael, the archangel: And whereas the said mayor, aldermen and commonalty of the said city, have also, by their petition under their common seal as aforesaid, prayed to have certain alterations made in the rights and privileges herein before recited, and not in and by the said deed surrendered and yielded up; Therefore,

L. Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That the

Surrender of certain said deed of the said mayor, aldermen and commonalty of *charter rights of the city of Albany accepted.* the city of Albany, is hereby declared to be accepted; and that the said rights and privileges of the mayor of the said city, of granting licences to tavern-keepers and others as aforesaid (excepting only in the city of Albany) and of being coroner of the said city and county of Albany, and also the right of regulating and carrying on the said trade with the Indians, and also the right of electing the said aldermen, assistants and chamberlain, on the day aforesaid, respectively granted in and by the said charter of incorporation, shall be, and the same are hereby respectively abolished, abrogated, annulled and made void; any thing in the said charter contained to the contrary thereof in any wise notwithstanding.

Election for corporation officers to be on the last Tuesday of September in every year. II. *And be it further enacted by the authority aforesaid,* That the election of the said aldermen, assistants and chamberlain, to be elected in pursuance of, and in virtue of the said charter, shall forever hereafter be held on the last Tuesday of September, in every year; and that the said aldermen, assistants and chamberlain shall, instead of taking the oaths of office pursuant to the directions of the said charter, on the fourteenth day of October, in every year forever hereafter, take the said oaths in the manner prescribed in and by the said charter, on the second Tuesday of October, in every year.

Recorder, in the absence of the mayor, may hold a common council. III, *And be it further enacted by the authority aforesaid,* That it shall and may be lawful, when and as often as the mayor of the said city for the time being, shall be sick, die or be absent from said city, for the recorder of the said city, to convene a common council for the said city, and to hold the same in the like manner, and with the same number of aldermen and assistants, as the mayor of the said city, in and by the said charter, is authorized and empowered to convene and hold the same.

IV. *And be it further enacted by the authority aforesaid,* That in case of the sickness, death or absence of the mayor and recorder, it shall and may be lawful to and for any three of the aldermen of the said city, to hold and

keep the court of common pleas established in and by the said charter, in like manner as if the said mayor or recorder were present in, and together with two aldermen, held and kept the same.

V. *And be it further enacted by the authority aforesaid,* That one of the coroners to be appointed in and for the county of Albany, shall forever hereafter be a citizen of the said city, and that such coroner so being a citizen of the said city, shall be the sole coroner in and for the said city.

Provided always, That nothing in this act contained, shall be construed to alter, change or abolish the right granted in and by the said charter, to the mayor of the said city, to grant licences to tavern-keepers, and others who sell liquors in the said city, in the manner directed and declared in and by the said charter, or to affect, alter, abridge or extend any right or privilege granted in and by the said charter, other than those in and by this act particularly mentioned, as altered, abrogated or abolished.

C H A P. LXV.

An ACT for the speedy Trial and Punishment of such Persons as shall commit any Offences under the Degree of Grand Larceny.

Passed 24th March, 1787.

I. *BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That every person who shall, after the passing of this act, be guilty of the felonious or fraudulent taking and carrying away of the meer personal goods of another, of the value of five pounds, lawful money of this state, or under (except in such cases where the offence is or shall be by law punishable with death) shall be deemed and adjudged to be guilty of petty larceny only; and being thereof duly convicted, by verdict or confession, on indictment in the supreme court, court of oyer and terminer or gaol delivery, or court of general sessions of the peace, of the city or county in which such offence shall have been committed, shall suffer such corporal punishment (not extending to life or limb) as the same court in which such conviction shall take place, in their discretion, shall think proper to award; and if such corporal punishment shall be by whipping, it shall not exceed thirty-nine lashes in one day.

II. *And whereas evil disposed persons do frequently go to shops, stores and other places within this state, and purchase or take up monies, goods or merchandize of various kinds, in the name of other persons, without their knowledge or consent; For prevention and punishment whereof, Be*

it further enacted by the authority aforesaid, That if any person or persons shall, from and after the passing of this act, knowingly and designedly, by false pretence or pretences, obtain from any other person or persons, any monies, goods or merchandize, or other effects whatsoever, with intent to cheat or defraud such person or persons of the same, he, she or they shall be deemed guilty of an offence against the people of this state; and being thereof duly convicted, in manner aforesaid, in any of the courts aforesaid, shall suffer such punishment, as in cases of petty larceny by this act is directed to be inflicted.

III. *And whereas not only several disorderly persons, inhabiting in the city and county of New-York, but many other vagrant and idle persons, passing the same, from the neighbouring counties and states, or elsewhere, have often*

committed divers misdemeanors, breaches of the peace, and other criminal offences aforesaid, under the degree of grand larceny, and not being able to procure bail, to appear at the general sessions of the peace, then next to be held in and for the said city and county, and having no substance of their own, have been a great expence to the inhabitants thereof, in maintaining them in the mean while in goal; for remedy whereof, *Be it further enacted by the authority aforesaid,* That every person who shall, after the passing of this act, commit any of the offences in this act above-mentioned and described, within the said city and county of New-York, and who being apprehended and brought before the mayor, recorder, or any one of the aldermen of the said city, and charged on oath with having committed any of the offences aforesaid, shall not forthwith give good sufficient bail for his or her appearance at the then next general sessions of the peace, to be held in and for the said city and county of New-York, then and there to answer the offence or offences which he or she shall be charged with, such person so charged shall be committed to the common gaol of the said city and county. And in case any person shall be so committed, and being kept in the said goal for the space of forty-eight hours from and after such commitment, shall not give good and sufficient bail for his or her appearance at the then next general sessions of the peace, to be held in and for the said city and county of New-York, then and there to answer for the offence or offences wherewith he or she shall be charged; then and in every such case, it shall and may be lawful to and for the mayor, recorder and aldermen of the said city for the time being, or any three of them, of whom the mayor or recorder to be, one, forthwith to hear and determine the offence or offences committed by such offender as aforesaid. And the said offender being convicted by confession, or the oath of one or more credible witness or witnesses, the said mayor, recorder and aldermen, or the major part of such of them as do appear in such court, are hereby further authorized and empowered to give judgment against the said offender so convicted as aforesaid, to have and receive such corporal punishment (not extending to life or limb, nor exceeding thirty-nine lashes in one day as aforesaid) as they, in their discretion, shall think proper; and to be confined in the house of employment or bridewell of the said city, to be kept at hard labour therein, or at any work or employment within any part of the said city and county, for any longer or shorter period, according to the nature of the offence; or either of the said punishments, as in the judgment of the said court, the nature of the offence, and character of the offender, shall render proper. But that no person shall be confined in manner aforesaid, by virtue of this act, for any term longer than six months. And after the said offender shall have received his or her punishment, being an inhabitant of the said city and county, shall be immediately discharged without paying any fees; but not being such an inhabitant, he or she shall immediately be ordered or transported out of the said city and county, to his or her last place of settlement or abode, if known. And if any person or persons having been so ordered or transported out of the said city and county as aforesaid, shall remain in the same for the space of forty-eight hours, or return thereto within six calendar months after such order or transportation, such person or persons so remaining or returning, shall be forthwith apprehended, and again receive such corporal punishment (not extending to life or limb, nor exceeding thirty-nine lashes in one day as aforesaid) or be confined in bridewell for so long a time, not exceeding three months, as the said mayor, recorder and aldermen, or any three of them, as aforesaid, in their discretion, shall order and direct.

IV. *And be further enacted by the authority aforesaid,* That in order to carry the sentences or judgments of such respective courts, of the mayor or recorder and aldermen, into immediate and effectual execution, it shall and may be lawful for the mayor or recorder, presiding at such court, by warrant or order under his hand and seal, directed to the sheriff of said city and county, to command the same sheriff, and the same sheriff is hereby directed and required, to cause the sentences or judgments of such respective courts, of the mayor or recorder, and aldermen, to be carried into effectual execution, at the time, and in the manner in the respective warrants or orders to be specified, according to the true intent thereof: And the deputy sheriffs, constables and marshals, and every of them, are, by this act, commanded and required, from time to time, to aid and assist such sheriff, or deputy sheriffs, in the execution of such respective warrants or orders.

V. *And be it further enacted by the authority aforesaid,* That the charges of prosecuting and punishing every such offender as aforesaid, in the manner above mentioned, shall be raised, levied and paid, in the same manner, and at the same time that money is raised in the said city and county, for the maintenance of the poor, and the other contingent expences arising in the said city and county; so as the whole charge for prosecuting and punishing each such offender, shall not exceed the sum of twenty shillings.

Persons accused, and giving bail, to be tried at the next general sessions.

VI. *And be it further enacted by the authority aforesaid,* That if any person, who shall be charged with an offence by this act, intended to be punished, and being apprehended for the same, shall, within the time allowed by this act for that purpose, give good and sufficient bail for his or her appearance at the then next general sessions of the peace, to be held in and for the said city and county, then and there to answer the offence or offences he or she shall be charged with, then and in such case, the said sessions shall take cognizance of the same; and on such offender being indicted and convicted, shall give such judgment, as the said mayor, recorder and aldermen might have given, in case the said offender had been tried and convicted by them, as before mentioned: Which said judgment the said court shall cause to be put in execution, by order, under the hand of the clerk of the same court, in like manner, as the judgment of the mayor, recorder and aldermen, is directed to be executed. And after the offender shall have received his or her punishments, he or she shall be immediately discharged as aforesaid.

Persons charged with such offences in any other county than New-York, how to be tried and punished.

VII. *And be it further enacted by the authority aforesaid,* That if any person shall, after the passing of this act, commit any of the offences in this act above mentioned and described, within any of the counties of this state, and be apprehended and brought before any justice of the peace of the said county, and charged on oath with having perpetrated any of the offences aforesaid, and thereupon committed for the same to the common gaol of the county, or to the custody of the constable of the town or place where such offender shall be taken, and be kept in the said gaol, or in the custody of such constable as aforesaid, the full space of forty-eight hours, from and after such commitment, shall not give good and sufficient bail for his or her appearance at the then next general sessions of the peace, to be held in and for the county where such offender shall be in custody, then and there to answer the offence or offences wherewith he or she shall be charged as aforesaid, then and in such case, it shall and may be lawful to and for the justices of the peace who committed such offender, to certify the cause of such commitment to two other justices of the peace in the said county, and

require them, by virtue of this act, to associate themselves with him, which they are hereby required to do. And the said justices being met, are hereby authorized and empowered forthwith to hear and determine the offence or offences committed by such offender. And the said offender being convicted by confession, or by oath of one or more credible witnesses or witnesses, the said justices, or any two of them agreeing, are hereby further authorized and empowered, to give judgment against the said offender so convicted as aforesaid, to have and receive such corporal punishment (not extending to life or limb, nor exceeding thirty-nine lashes in one day as aforesaid) as they in their discretion, shall think proper; and by their warrant directed to the constable of the town or place where such justices shall hear and determine the said offence or offences (who is hereby directed and required to execute the same) shall cause their said judgment to be put in execution: And after such offender shall have received his or her punishment, being an inhabitant of such county, shall be immediately discharged without paying any fees; but not being such an inhabitant, he or she shall be ordered or transported, by warrant from the said justices, to the place of his or her last settlement or abode, if known; which warrant the said justices are hereby empowered and directed to issue. And further, That nothing in this act contained, shall be construed to prevent the justices from trying any such offender, in less than forty-eight hours, if he or she shall require the same. And further, That if any person having been so ordered or transported out of such county, shall remain in the same county, for the space of forty-eight hours, or return thereto within six calendar months after such order or transportation, such person so remaining or returning, shall be forthwith apprehended, and again receive such corporal punishment (not extending to life or limb, nor exceeding thirty-nine lashes in one day as aforesaid) as three justices of the peace in the same county, assembled for that purpose, or any two of them, shall, in their discretion, think proper; and so from time to time, as often as such person or persons shall so remain or return.

VIII. *And be it further enacted by the authority aforesaid,* That the charges of prosecuting, punishing and transporting every such offender, shall be defrayed by the respective counties where the same offence shall happen, and shall be raised, levied and paid in the same manner, and at the same time, that money is raised for the payment of the other contingent charges of such respective counties, so as the whole charges for each such offender, shall not exceed the sum of forty shillings.

IX. *And be it further enacted by the authority aforesaid,* That the justices, or court, before whom any person shall be convicted of any of the offences aforesaid, shall be, and hereby are empowered, if they think it proper, in lieu of corporal punishment, to impose a fine on such offender, not exceeding the sum of ten pounds; which fine, or so much thereof as shall be sufficient, shall be applied towards the payment of the charges of the prosecution, and the remainder, if any be, shall be paid to the treasurer of the county where the same shall be imposed, for the use of the same county; any thing in this act contained to the contrary notwithstanding.

X. *Provided always, and be it further enacted by the authority aforesaid,* That the person or persons from whom any monies, goods, merchandize or effects, shall have been taken, or fraudulently obtained, contrary to the true intent and meaning of this act, shall have such remedy, by suit at law therefore, as he, she or they might have had if this act had never been made; any thing herein contained to the contrary in any wise notwithstanding.

C H A P. LXVI.

An ACT for the more effectual Punishment of Persons who shall be guilty of the Trespasses therein mentioned, in the Cities of New-York, Albany and Hudson, and the Township of Schenectady.

Passed 24th March, 1787.

WHEREAS evil-minded persons have often broken, taken down or carried away, the glass lamps hung out or fixed up before the dwelling-houses of many of the inhabitants, and in the streets of the city of New-York, to illuminate the streets aforesaid, in the night time, or have extinguished the lights therein, and have also been guilty of breaking glass windows, porches and knockers of doors in the said city, and in the cities of Albany and Hudson, and township of Schenectady, and of committing other trespasses and enormities, injurious to the property of the inhabitants, and to the disturbance of the peace in the said respective cities and township: For prevention whereof in future,

I. *Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That if any person shall, after the passing of this act, wilfully break, take down or carry away, any glass lamp already hung or fixed, or hereafter to be so hung or fixed as aforesaid, in any of the streets of the said cities or township, or extinguish the lights therein, or be aiding or abetting in the same, or shall wilfully break or deface any glass window, porch, knocker or other fixture, in any of the said cities or township, and shall be thereof convicted, before the mayor, recorder or any one of the aldermen of the said cities respectively, or before any justice of the peace residing in the township aforesaid, either by the confession of the party, or by the oath of one or more credible witness or witnesses, he or she shall, for every such offence, forfeit a sum not exceeding ten pounds, lawful money of this state; to be recovered with costs, and levied by distress and sale of the goods and chattels of every such offender, by warrant under the hand and seal of such mayor, recorder, alderman or justice, before whom such offender shall be convicted; one moiety of which forfeiture, when recovered, to be paid to the treasurer or chamberlain of the said cities respectively, for the time being, to be applied for the purposes of providing new lamps, in the room of such as shall be so taken out or carried away, and for repairing such of them as shall be broken or injured as aforesaid, and for the support and maintenance of the poor of such respective cities or township, where such offences shall be committed; and the other moiety of such forfeiture to be paid to the person or persons who shall prosecute for the same to effect.

II. *And be it further enacted by the authority aforesaid,* That upon refusal of payment of such respective forfeiture or forfeitures, and want of sufficient distress whereon the same can be levied, it shall and may be lawful for such mayor, recorder, alderman or justice of the peace, before whom such conviction or convictions shall take place, by warrant under his hand and seal, to commit every such offender, if convicted in the city of New-York, to the bridewell, or house of employment of the said city; if convicted in the cities of Albany or Hudson, to the common gaol of the same cities respectively; and if convicted in the township of Schenectady aforesaid, to the common gaol of the city and county of Albany; there to remain, without bail or mainprize, for the space of two months, or until such forfeiture and costs are paid. And if any such offence shall be committed by any apprentice, servant or slave, such forfeiture shall be paid by his or her master, mistress or owner.

or in default thereof, such apprentice, servant or slave, shall be committed to such bridewell or gaol, in manner aforesaid.

III. And whereas the mischiefs aforesaid are generally committed in the night time, when the offenders cannot be easily known; in order, therefore, to carry this act into effect, *Be it further enacted by the authority aforesaid,*

Offenders unknown to be detained until their names are discovered, or the next morning.

That it shall and may be lawful to and for any sheriff, deputy sheriff, constable, marshal or watchman of the said cities and township aforesaid, who shall see any person commit any of the mischiefs or trespasses, in either of the cities or the township aforesaid, if such person or persons shall be unknown to such sheriff, deputy sheriff, constable, marshal or watchman, to seize, secure and detain such offender so unknown to him as aforesaid, until he can discover the name of such offender, or until the next morning, if the offence shall be committed in the night time, and the offender shall refuse to discover his or her name, when such offender shall be brought before the mayor, recorder or one of the aldermen of the said cities respectively, or justice of the peace residing in the township aforesaid, who, on conviction of such offender, shall proceed against him or her in the manner herein before directed. And further, In case any person shall commit any or either of the offences aforesaid, in the presence of any such sheriff, deputy sheriff, constable, marshal or watchman, that then every such sheriff, deputy sheriff, constable, marshal or watchman, shall forthwith give information thereof to such mayor, recorder, alderman or justice of the peace, in order that such offender may be convicted thereof, and punished in manner and form as by this act is directed.

IV. *And be it further enacted by the authority aforesaid,* That this act, or any thing herein contained, shall not bar or preclude any person or persons from recovering his, her or their damages, against any other person or persons, who shall be guilty of any of the mischiefs or trespasses aforesaid; but that the same may be recovered in the same manner, as if this act had never been passed.

V. *And be it further enacted by the authority aforesaid,* That every person who shall or may be present when any of the mischiefs or trespasses in this act mentioned, shall be committed, shall be deemed to be guilty thereof, and be subject to the penalties inflicted by this act, although he or she shall not be aiding, abetting or assisting therein, unless such person shall give evidence, whereby to convict the person or persons really guilty thereof, or unless he or she shall declare, upon oath, that he or she came there accidentally, and that he or she doth not know who the offender or offenders is or are.

VI. And for the more easy discovery and detection of such offenders; *Be it further enacted by the authority aforesaid,* That if two or more persons shall have been jointly concerned in committing any of the offences aforesaid, and one or more of them (not being before informed against) shall, within the space of one month after the offence committed, inform against any, or all the other or others, concerned in the same offence, so as to convict him, her or them, the person so informing shall not be liable to the payment of the forfeiture herein before mentioned, but shall, notwithstanding his or her offence, be entitled to the reward herein before allowed to informers; any thing herein before contained to the contrary thereof in any wise notwithstanding.

C H A P. LXIX.

An ACT directing a Mode of Trial, and allowing of Divorces in cases of Adultery.

Passed 30th March, 1787.

WHEREAS the laws at present in being within this state, respecting adultery, are very defective, and applications have, in consequence, been made to the legislature, praying their interposition: And whereas it is thought more advisable for the legislature to make some general provision in such cases, than to afford relief to individuals, upon their partial representations, without a just and constitutional trial of the facts:

I. *Be it therefore enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That it shall and may be lawful, in all cases of adultery that have already been committed, or may hereafter be committed, where the parties are inhabitants of this state, for the party injured to exhibit or present a petition or bill to the chancellor of this state for the time being in chancery, setting forth the adultery of which he or she complains. Whereupon a subpoena, and other process shall issue, as in other causes in the said court, until the party complained of shall appear and answer the allegations of the said bill or petition, which answer shall be received without oath; and if the party complained of shall, by his or her answer, deny the fact or facts of adultery stated in the said bill or petition, the chancellor shall and may thereupon direct such proper issue or issues, as to him shall seem expedient for trial of the fact or facts of adultery stated in the said bill or petition, which issue or issues shall be tried, either by a special or common jury, before the judges of the supreme court, or some or one of them, at the bar of the said court, or at any circuit court within this state, as the chancellor for the time being, shall direct. But if the said party complained of shall not, in his or her said answer, deny the allegations of the said bill or petition, or if such proceedings shall be had in the same court of chancery, that the said bill or petition ought, according to the course of that court, to be taken pro confesso, then, and in either of the said cases, the chancellor shall nevertheless direct proof to be made before one of the masters of the said court, of the facts stated in the said bill or petition, who shall report the same proofs, and his opinion thereon, to the chancellor, at such time as shall be by the said court of chancery for that purpose appointed.

II. *And be it further enacted by the authority aforesaid,* That if by the verdict of a jury, upon trial of such issue or issues as aforesaid, it shall appear or be found that the said party complained against was guilty of adultery, or if sufficient proof has been thereof had in the manner herein before prescribed, where the fact or facts stated in such bill or petition as aforesaid, have been confessed by the answer of the party complained against, or ought, according to the course of the said court of chancery, to be taken pro confesso, then, and in any such case, the chancellor shall and may proceed, by sentence or decree in the same court, to pronounce the marriage between the said parties to be dissolved, and both of them freed from the obligations of the same: Provided, That such dissolution of such marriage, shall in no wise affect the legitimacy of the children thereof. And the chancellor shall and may thereupon take such order touching the care and maintenance of the children (if any there be) of that marriage, and also touching the maintenance of the wife, or any allowance to be made to her, and the security to be given for the same, as from the circumstances of the parties, and the nature of the case, may be proper and sufficient.

III. *And be it further enacted by the authority aforesaid, That after the dissolution of any marriage has been pronounced by virtue of this act, it shall not be lawful for the party convicted of adultery, to re-marry any person whatsoever; and that every such re-marriage shall be null and void; but that the other party may make and complete another marriage, in like manner as if the party convicted was actually dead; any law, usage or custom to the contrary thereof in any wise notwithstanding.*

C H A P. LXXI.

† 6th sess. ch. 31. *An ACT to repeal Part of an Act, entitled, † An act for granting a more effectual Relief in Cases of certain Trespasses.*

Passed 4th April, 1787.

BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That so much of the act aforesaid, as is contained in the words following, to wit: "And if any such action shall be brought in any inferior court within this state, the same shall be finally determined in such court: and every such action shall be considered as a transitory action; that no defendant or defendants shall be admitted to plead in justification, any military order or command whatever, of the enemy, for such occupancy, injury, destruction, purchase or receipt, nor to give the same in evidence on the general issue," be, and the same is hereby repealed.

C H A P. LXXII.

An ACT for preventing Suits being brought in the Supreme Court, for any Debt or Sum not exceeding One Hundred Pounds.

Passed 5th April, 1787.

WHEREAS there now are, and long have been, courts of record in each of the respective cities and counties of this state, where such as have occasion to sue for debts or wrongs, may, with small expence, receive justice according to the merits of their causes: And whereas the prosecution of suits in the supreme court of this state, is necessarily attended with great charge and trouble, as well as loss of time to the suitors, who in many instances live at places remote from the said court; Therefore,

I. *Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That if*

If the plaintiff does not recover above 20l. he shall pay costs to the defendant. in any personal action or suit already commenced, and now depending, or hereafter to be commenced and prosecuted in the said supreme court, the plaintiff shall not recover above the sum of twenty pounds, besides costs, then, and in

every such case, the plaintiff shall not be entitled to, or recover any costs of suit, but shall pay costs to the defendant, thereupon to be taxed; and the defendant shall, in such case, have judgment and execution for such costs, in the same manner as if a verdict had been given for such defendant. And further, That if in any personal action or suit already commenced, and now depending, or hereafter to be commenced and prosecuted in the said supreme court, the plaintiff or plaintiffs shall recover a judgment in such suit or action, in his, her or their favour, for a debt or sum, which, exclusive of costs, shall be upwards of twenty pounds, and not exceed one hundred pounds, then,

and in every such case, the plaintiff or plaintiffs shall be entitled to, and recover no more or other costs than he, she or they would have been entitled to, if such suit or action had been commenced and determined in any mayor's court, or court of common pleas in this state. Provided always, That such costs shall not exceed the sum of ten pounds: And provided also, That in all cases where any suit or action commenced, in either of the mayor's courts, or courts of common pleas, hath been or shall be removed into the supreme court, by or at the instance of the defendant, if the plaintiff shall obtain a judgment therein, for any sum exceeding ten pounds, besides costs, then the plaintiff in every such case, shall have and recover costs of suit in the said supreme court, together with the costs in such mayor's court, or court of common pleas, including all such expences as the same plaintiff shall have been put to in the prosecution of such suit.

No personal action to be removed into the supreme court, where the demand does not exceed 100l.

II. *And be it further enacted by the authority aforesaid,* That no personal action or suit now depending, or hereafter to be commenced in any mayor's court, or court of common pleas in this state, upon any bond or specialty, or for any other matter, cause or thing whatsoever, where the sum mentioned in the condition of such bond or specialty, with the interest thereof, or the matter or thing in demand, suit or controversy, shall not exceed the sum of one hundred pounds, current money of this state, shall be stayed or removed into the supreme court, by any writ of habeas corpus, certiorari, or other writ or process whatsoever, other than writs of error or attaint.

No habeas corpus to be received after interlocutory judgment, or a juror sworn to try the cause.

III. *And be it further enacted by the authority aforesaid,* That no writ or writs of habeas corpus, or any other writ or writs, sued forth or to be sued forth, by any person or persons whomsoever, out of the said supreme court, to remove any action, suit, plaint or cause, depending or to be depending in any mayor's court, or court of common pleas in this state, shall be received or allowed by the judge or judges, officer or officers, of the court wherein or to whom any such writ or writs shall be directed or offered to be delivered; but that he and they shall and may proceed in the said cause or causes, as though no such writ or writs were sued forth or delivered to him or them, unless the said writ or writs be delivered to the judge or judges, officer or officers, of the said court, before any interlocutory or other judgment entered in the said cause, and before that the jury which is to try the cause in question, between the party or parties plaintiffs, and the party or parties that sued forth the said writ or writs, or for whose benefit the said writ or writs is or shall be sued forth, have appeared, and one of the said jury sworn to try the said cause.

No cause to be again removed after procedendo.

IV. *And be it further enacted by the authority aforesaid,* That if any action, suit, bill, plaint or cause, which is or shall hereafter be brought, commenced or depending in any of the mayor's courts, or courts of common pleas in this state, shall be removed or stayed by any such writ or writs, or process, to be sued forth or out of the said supreme court, and the same action, suit, bill, plaint or cause, shall afterwards be remanded or sent back again, by any writ or writs of procedendo, or other writ whatsoever, that then the said action, suit, bill, plaint or cause, shall never afterwards be removed or stayed before judgment, by any writ or writs whatsoever, to be sued forth or out of the said supreme court.

V. *And be it further enacted by the authority aforesaid,* That no writ of habeas corpus or certiorari, or other writ or process whatsoever, shall be granted or sued forth, or out of the said supreme court, to remove any action, suit, bill, plaint or cause whatsoever, out of any of the mayor's courts, or courts of common pleas in this state, unless the same writ or process be signed with the proper hand of one of the justices of the said supreme court.

VI. *And be it further enacted by the authority aforesaid,* That if any writ or writs whatsoever, shall be granted or sued forth, or out of the said supreme court, contrary to the true intent and meaning of this act, that then it shall and may be lawful to and for the judge or judges, officer or officers, to whom such writ or writs shall be directed or delivered, to disallow and refuse the same; and they are hereby directed and required to proceed, as if no such writ or writs had been granted or sued out or forth as aforesaid.

VII. *And be it further enacted by the authority aforesaid,* That all transitory actions and suits now depending, or hereafter to be brought, commenced or prosecuted in any of the mayor's courts, or courts of common pleas in this state, may be heard, tried and determined therein, although the real cause of action did not arise within the city or county where such action or suit is or shall be brought or commenced; and that the said courts shall not admit or allow of any foreign plea in any such case, to quash, bar or stay any such suit or action; but proceed to hear, try and determine the same, in such manner as if the cause of action had arisen within the jurisdiction of the court where such suit or action is or shall be so brought or commenced; any law, usage or custom to the contrary notwithstanding.

VIII. *Provided always, and be it further enacted by the authority aforesaid,* That this act shall not extend to any suit or action, wherein the people of the state of New-York, are or shall be interested; nor to any suit or action, where freehold, inheritance, or title to lands or tenements, shall in any wise come in question; nor to actions of replevin, or of assault and battery, or of false imprisonment, or of slander; nor to any suit or action to be brought or commenced by or against the mayor, aldermen and commonalty of the city of New-York, or the mayor, aldermen and commonalty of the city of Albany, or the mayor, recorder, aldermen and commonalty of the city of Hudson.

C H A P. LXXVI.

§ 9th sess. ch. 23. *An ACT to amend an Act, entitled, ‡ An Act for the Collection and Commutation of Quit-Rents.*

Passed 11th April, 1787.

WHEREAS sundry circumstances have intervened which have rendered it impossible for those from whom quit-rents were due, to discharge or commute for the same by the times limited in the act, entitled, An act for the collection and commutation of quit-rents, passed the first day of April, 1786: Therefore,

I. *Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That it shall

Further time given
for payment of quit-
rent and commuta-
tion.

* Time prolonged,
11th sess. ch. 39, sec.
2. 12th sess. ch. 39.

and may be lawful to and for the treasurer of this state, at any time between the passing of this act and the * first day of May, one thousand seven hundred and eighty-eight, to take and receive from any person, being a citizen of this state, or of any other of the United States, any sum or sums of money, due and in arrear for quit-rents, or any sum or sums of money in commutation for annual quit-rents, in such public securities and certificates as are designated in the first and second sections of the said act, and in the manner thereby directed ; and that no process shall be commenced by the said treasurer for the recovery of any quit-rents, which may be due or become due to the people of this state, until after the first day of May, one thousand seven hundred and eighty-eight ; any thing in the said act to the contrary hereof notwithstanding.

II. *And be it further enacted by the authority aforesaid,* That where quit-rents shall be paid for such shares of land as are designated in the third section of the said act, or that such shares shall be commuted for, the treasurer shall, upon such payment, give the person making such payment, a receipt or certificate, expressing the sum so paid, and specifying whether the same be for quit-rents due and in arrear, or for quit-rents and commutation both, and designating the patent, and the lot or lots for which such payment is made ; and if such payment is for both arrears of quit-rent and commutation, the lands so paid for shall never thereafter be subject to process or sale, for any quit-rents which may at any time become due from any other lot or lots in such patent ; and if such payment is for arrears of quit-rent only, then the lands so paid for shall not be subject to process or sale, for any arrears of quit-rent which may be due to the time of such payment from any other lot or lots in such patent ; any thing in the said act to the contrary hereof notwithstanding.

III. And whereas tracts of land within this state have been so divided and alienated, that many of the present owners and proprietors hold less than an original proprietor's share, and difficulties may arise as well with those who may pay the quit-rents and commute for their respective shares, as with the treasurer to ascertain such share : For remedy whereof, *Be it further enacted by the authority aforesaid,* That it shall and may be lawful for any three or more of the present proprietors or owners of any such patent or lands, by advertisement, to be put up and continued for ten days successively, on any part of such lands, to notify and require all owners and proprietors of lands within such patent, to meet at a place certain within the same, and at a day certain to be expressed in such advertisement, such day not to be assigned at less than twenty days from the date of such advertisement ; and such of the owners and proprietors as shall then meet, may proceed, by plurality of voices, to chuse two assessors and one collector ; which assessors so chosen shall, within twenty days thereafter, make an assessment-roll of the several owners and proprietors of lands in such patent, and shall enter in such roll the sums respectively due for quit-rents, to the twenty-ninth day of September, one thousand seven hundred and eighty-seven, from each according to the proportion and share which each shall have, hold, possess and enjoy, within such patent, so as that the whole shall make up and amount to the whole of the quit-rents which will be due to the people of the state, to the time herein before mentioned, and shall designate which share or shares have, by forfeiture to the people of this state, become discharged of quit-rent, and which share or shares are entitled to remission of quit-rents, by this or the

said act, passed the first day of April, 1786. And shall also specify the amount of the commutation for every share or shares, subject to present or future quit-rents, to the end that such as incline to commute may be enabled to pay for the same to the collector, and shall, in separate columns, charge each share or shares subject to quit-rents, and for which commutation may be made, with six per cent. to be paid in specie, on the amount of the quit next due, and on the amount of the commutation; five per cent. whereof to go as a compensation to the collector, for his trouble in collecting and paying the same to the treasurer of this state, and one per cent. thereof to be paid to the assessors for their trouble in the execution of their office. And further, That the said assessors, before they begin such assessment, shall take an oath before a justice of the peace, well, truly, impartially and in due proportion, according to the best of their understanding, to assess and rate the several owners and proprietors of such patent for which they are chosen assessors. And further, That the said assessors shall, within ten days next after completing such assessment-roll, and having signed the same, and put their seals thereto, deliver the same unto the collector so chosen as aforesaid, which said collector shall forthwith collect the several sums charged in such assessment, for arrears of rent and for commutation, if the party or parties are willing to pay such commutation, in such public securities as are designated in the said act, passed the first day of April, 1786, together with the said six per cent. in specie, on the arrears of quit-rent, and on such commutation as shall be paid, so that he pay the same (except the six per cent. as aforesaid) to the said treasurer, on or before the first day of May, one thousand seven hundred and eighty-eight. And if any of the said owners or proprietors of such patent shall refuse, neglect or delay to pay his or her share or proportion of the said rate or assessment of quit-rent, and the said five or six per cent. as the case may be, then it shall and may be lawful for such collector, and he is hereby required to collect and levy the same by distress and sale of any goods and chattels, if any can be found, on the share or shares so charged, and for which payment has been refused, neglect or delayed, in the same manner as the collectors of public taxes are or may be empowered by law to do, or to prosecute the defaulter or defaulters for the same, before any one justice of the peace within the county where such lands lay, who is hereby authorised to hear and determine the same. And further, If such collector shall not find goods and chattles on the lands in such share or shares, whereon to make distress, or shall not be able to recover such rate or assessment for quit-rents, before such justice, then such collector shall, at the time of his paying the public securities by him collected unto the said treasurer, deliver the assessment-roll to the said treasurer, together with an abstract of the names of such as have paid the quit-rents only, and the amount so paid by each, together with the names of such whose lands were discharged from quit-rents as aforesaid, and another abstract of such as have paid both the quit-rents and the commutation, and the amount so paid by each, and a third abstract, containing the names of the defaulters, if any there be, and the sums charged to each for quit-rents; all which abstracts shall be sworn to as just and true, by the said collector; and the said treasurer shall thereupon give a proper receipt at the foot, or on the back of the respective abstracts for which he shall have received the amount for quit-rents, or for quit-rents and commutation both, as the case may be, which receipt for quit-rents shall exonerate the persons named in the abstract, from any demand for quit-rents, to the time for which they were paid; and the lands so paid for, shall not be

subject to process or sale for any quit-rents then due from any one or more defaulters ; and the receipt for quit-rents and commutation both, shall forever thereafter exonerate and discharge the lands for which they shall have been paid, from any demand on the part of the people of this state, for quit-rents ; nor shall process issue, or any sale be hereafter made of such land so paid or commuted for, on account of any quit-rents which may be due from any other lands in such patent ; any thing in the said act to the contrary hereof notwithstanding.

[The 5th section of this act is repealed, 14th sess. ch. 54. sec. 3.]

VI. *And be it further enacted by the authority aforesaid,* That the treasurer of this state shall, and he is hereby required, as soon as may be after the passing of this act, to transmit to the respective clerks of the several counties within this state (except to the clerks of the city and county of New-York, the counties of King's, Queen's and Richmond) a schedule of all the quit-rents due, or to become due within the county of which he is clerk, to the twenty-ninth day of September next, specifying the date of every patent, the names of the patentees, and the quantity of land contained in each patent, where a quit-rent is reserved per hundred acres, and the annual quit-rent, where a quit-rent in gross is reserved, and where quit-rents are reserved in kind, to specify the value in money, as by the said act herein referred to is directed.

VII. *And be it further enacted by the authority aforesaid,* That the tenth, eleventh and fourteenth sections of the said act, and the preamble to the said fourteenth section, are hereby repealed.

C H A P. LXXXII.

An ACT to institute an University within this State, and for other Purposes therein mentioned.

Passed 13th April, 1787.

WHEREAS by two acts of the legislature of the state of New-York, the one passed the first day of May, and the other the twenty-sixth day of November, one thousand seven hundred and eighty-four, an university is instituted within this state, in the manner, and with the powers therein specified : And whereas from the representation of the regents of the said university, it appears that there are defects in the constitution of the said university, which call for alterations and amendments : And whereas a number of acts on the same subject, amending, correcting and altering former ones, tends to render the same less intelligible and easy to be understood ; Wherefore, to the end that the constitution of the said university may be properly amended, and appear entire in one law, it will be expedient to delineate and establish the same in this, and repeal all former acts relative thereto :

I. *Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That an university be, and is hereby instituted within this state, to be called and known by the name or style of, The regents of the university of the state of New-York. That the said regents shall always be twenty-one in number, of which the governor and lieutenant-governor of the state for the time being, shall always, in virtue of their offices, be two. That the governor and lieutenant-governor, and John Rodgers, Egbert Benson, Philip Schuyler, Ezra

L'Homedieu, Nathan Carr, Peter Sylveſter, John Jay, Dirck Romeyn, James Livingſton, Ebenezer Ruſſel, Lewis Morris, Matthew Clarkſon, Benjamin Moore, Eilardus Weſterlo, Andrew King, William Lynn, Jonathan G. Thompkins, John M'Donald and Frederick William De Steuben, ſhall be, and hereby are appointed the preſent regents; and that they, and all the future regents, ſhall continue in place during the pleaſure of the legiſlature. That all vacancies in the regency which may happen by death or removal, or reſignation, ſhall, from time to time, be ſupplied by the legiſlature, in the manner in which delegates to congreſs are appointed. That the ſaid regents,

Regents to chooſe a chancellor and vice-chancellor, who ſhall preſide at their meetings. as ſoon as may be after the paſſing of this act, ſhall convene at ſuch time and place as the governor ſhall appoint, and by plurality of voices, by ballot, chooſe a chancellor and vice-chancellor, to continue in office during the pleaſure of

the ſaid regents. That the ſaid chancellor, or in his abſence from the ſaid meeting, the vice-chancellor, or in caſe both be abſent, then the ſenior regent preſent (and whoſe ſeniority ſhall be decided by the order in which the regents are named or appointed) ſhall preſide; and in caſe of diſſention, have a caſting voice at all meetings of the ſaid regents. That all meetings of the ſaid regents, after the firſt, ſhall be held at ſuch time and place as the chancellor, or in caſe of his death, abſence, from the ſtate, or reſignation, the vice-chancellor, or in caſe of the death, abſence from the ſtate, or reſignation of both of them, then at ſuch time and place as the ſenior regent preſent in the ſtate, ſhall appoint. And it ſhall be the duty of the chancellor, vice-chancellor, or ſenior regent, as the caſe in virtue of the above contingencies may be, to order and call a meeting of the ſaid regents, whenever and as often as three regents ſhall, in writing, apply for and requeſt the ſame; ſuch order or call to be publiſhed in one or more of the public news-papers in the city of New-York, at leaſt ten days prior to ſuch meeting. And further, That any eight of the ſaid regents, meeting at the time and place ſo ordered, ſhall be a quorum, and be enabled to tranſact and do the buſineſs which by this act they ſhall be authorized or directed to do and tranſact. That the ſaid univerſity ſhall be, and hereby is incorporated, and ſhall be known by the name of, The regents of the univerſity of the ſtate of New-York, and by that name ſhall have perpetual ſucceſſion, and power to ſue and be ſued, to hold property, real and perſonal, to the amount of the annual income of forty thouſand buſhels of wheat; to buy and to ſell, and otherwiſe lawfully diſpoſe of lands and chat-tels; to make and uſe a common ſeal, and to alter the ſame at pleaſure.

II. *And be it further enacted by the authority aforeſaid,* That the ſaid corporation ſhall appoint, by ballot, a treaſurer and a ſecretary, to continue in office during the pleaſure of the corporation. That the treaſurer ſhall keep fair and true accounts of all monies by him received and paid out; and that the ſecretary ſhall keep a fair journal of the meetings and proceedings of the corporation, in which the yeas and nays on all queſtions ſhall be entered, if required by any one of the regents preſent. And to all the books and papers of the corporation, every regent ſhall always have acceſs, and be permitted to take copies of them.

Regents to viſit colleges, academies and ſchools. III. *And be it further enacted by the authority aforeſaid,* That it ſhall and may be lawful to and for the ſaid regents, and they are hereby authorized and required to viſit and inſpect all the colleges, academies and ſchools, which are or may be eſtabliſhed in this ſtate; examine into the ſtate and ſyſtem of education and diſcipline therein, and make a yearly report thereof to the legiſlature; and alſo to viſit

every college in this state once a year, by themselves or by their committees; and yearly to report the state of the same to the legislature; and to make such bye-laws and ordinances, not inconsistent with the constitution and laws of the state, as they may judge most expedient for the accomplishment of the trust hereby reposed in them. And in case the trustees of the said col-

leges, or any of them, shall leave the office of president of the college, or the trustees of any academy, shall leave the office or place of principal of the academy vacant, for the space of one year, it shall, in all such cases, be lawful for the regents, unless a reasonable cause shall be assigned for such delay, to their satisfaction, to fill up such vacancies; and the persons by them appointed shall continue in office during the pleasure of the regents, and shall respectively be received by the college or academy to which they may be appointed, and shall have all the powers, and exactly the same salary, emoluments and privileges, as his next immediate predecessor in office enjoyed, if any predecessor he had; if not, then such salary as the regents shall direct, to be paid by the trustees, who shall, out of the funds or estate of their college or academy, be compellable by the said president or principal to pay the same.

IV. *And be it further enacted by the authority aforesaid,* That the said regents shall have the right of conferring, by diplomas under their common seal, on any person or persons whom they may think worthy thereof, all such degree or degrees, above or beyond those of bachelor or master of arts, as are known to and usually granted by any university or college in Europe.

V. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the said regents, from time to time, to apply such part of their estate and funds, in such manner as they may think most conducive to the promotion of literature, and the advancement of useful knowledge within this state. Provided always, That where grants shall be made to them for certain uses and purposes therein expressed and declared, the same shall not be applied, either in the whole or in part, to any other uses.

VI. *And be it further enacted by the authority aforesaid,* That the regents shall annually meet on the second Thursday next after the senate and assembly, at the annual session of the legislature, shall have formed a quorum respectively, and at the assembly-chamber immediately after the assembly shall have adjourned. That the said regents, at such meetings, and all others, may adjourn from time to time, not exceeding ten days at any one time.

VII. *And be it further enacted by the authority aforesaid,* That any citizen or citizens, or bodies corporate, within this state, being minded to found a college at any place within the same, he or they shall, in writing, make known to the regents, the place where, the plan on which, and the funds with which it is intended to found and provide for the same, and who are proposed for the first trustees; and in case the regents shall approve thereof, then they shall declare their approbation, by an instrument under their common seal, and allow a convenient time for completing the same. And if at the expiration of the said time, it shall appear to the satisfaction of the regents, that the said plan and propositions are fully executed, then they shall, by act under their common seal, declare, that the said college, to be named as the founders shall signify, and with such trustees, not exceeding twenty-four, nor less than ten, as they shall name, shall forthwith become incorpor-

ated, and shall have perpetual succession, and enjoy all the corporate rights and privileges enjoyed by Columbia college, herein after mentioned.

Former charter to the college in the city of New-York, confirmed.

VIII. *And be it further enacted by the authority aforesaid,* That the charter heretofore granted to the governors of the college of the province of New-York, in the city of New-York, in America, dated the thirty-first day of October, in the year of our Lord one thousand seven hundred and fifty-four, shall be, and hereby is fully and absolutely ratified and confirmed, in all respects, except that the college thereby established, shall be henceforth called Columbia college : That the stile of the said corporation shall be, the trustees of Columbia college, in the city of New-York ; and that no persons shall be trustees of the same, in virtue of any offices, characters or descriptions whatever ; excepting also such clauses thereof as require the taking of oaths, and subscribing the declaration therein mentioned ; and which render a person ineligible to the office of president of the college, on account of his religious tenets, and prescribe a form of public prayer to be used in the said college ; and also excepting the clause thereof which provides, that the bye-laws and ordinances to be made in pursuance thereof, should not be repugnant to the laws and statutes of that part of the kingdom of Great-Britain, called England ; except also, that in all cases where fifteen governors are required to constitute a quorum for the dispatch of business, thirteen trustees shall be sufficient. Provided always, That the bye-laws and ordinances to be made by the trustees of the said Columbia college, shall not be contrary to the constitution and laws of this state.

IX. *And be it further enacted by the authority aforesaid,* That James Duane, Samuel Provost, John H. Livingston, Richard Varick, Alexander Hamilton, John Mason, James Wilson, John Gano, Brockholst Livingston, Robert Harper, John Daniel Gross, Johann Christoff Kunze, Walter Livingston, Lewis A. Scott, Joseph Delaplaine, Leonard Lispenard, Abraham Beach, John Lawrence, John Rutherford, Morgan Lewis, John Cochran, Gershom Seixas, Charles M'Knight, Thomas Jones, Malachi Treat, Samuel Bard, Nicholas Romein, Benjamin Kiffam, and Ebenezer Crosby, shall be, and they are hereby constituted and declared to be the present trustees of Columbia college, in the city of New-York, and that when by the death or resignation, or removal of any of the said trustees, the number of those trustees shall be reduced to twenty four, then and from thenceforth the said twenty-four trustees shall be, and they hereby are declared and constituted trustees of the said Columbia college, in perpetual succession, according to the true intent and meaning of the said charter ; and all vacancies thereafter shall be supplied in the manner thereby directed.

The power, rights and estates of the college vested in the trustees.

X. *And be it further enacted by the authority aforesaid,* That all and singular the power, authority, rights, privileges franchises and immunities, so heretofore granted to, and vested in the said governors of the college of the province of New-York, in the city of New-York, in America, by the said charter, excepting, as before excepted, shall be, and the same hereby are granted to and vested in the trustees of Columbia college, in the city of New-York, and their successors forever, as fully and effectually, to all intents and purposes, as if the same were herein particularly specified and expressed ; and all and singular the lands, tenements, hereditaments and real estate, goods, chattels, rents, annuities, monies, books and other property, whereof the said governors of the college of the province of New-York, in the city of New-York, in Ame-

rica, were seized, possessed or entitled, under and in virtue of the said charter, or with which the regents of the said university were invested, under or by virtue of the said acts, for the use or benefit of the said Columbia college, shall be, and the same hereby are granted to and vested in the said trustees of Columbia college, in the city of New-York, and their successors forever, for the sole use and benefit of the said college; and it shall and may be lawful to and for the said trustees, and their successors, to grant, bargain, sell, demise, improve and dispose of the same, as to them shall seem meet. Provided always, That the lands given and granted to the governors of the college of the province of New-York, in the city of New-York, in America, by the corporation, heretofore styled, The rector and inhabitants of the city of New-York, in communion of the church of England, as by law established, on part whereof the said college is erected, shall not be granted for any greater estate, or in any other manner, than is limited by the said charter.

Senior trustee to call special meetings. XI. *And be it further enacted by the authority aforesaid,* That when any special meeting of the trustees of the said college, shall be deemed necessary, it shall and may be law-

ful to and for the senior trustee of the said college, then in the city of New-York, and taking upon himself the exercise of the office (which seniority shall be determined according to the order in which the said trustees are named in this act, and shall be elected hereafter) and he is hereby authorized and required, on application for that purpose in writing, under the hands of any five or more of the said trustees, to appoint a time for such special meeting, in some convenient place within the said city, and to cause due notice thereof to be given in the manner directed by the said charter.

XII. And whereas academies for the instruction of youth in the languages, and other branches of useful learning, have been erected and instituted in different parts of this state, by the free and liberal benefactions of corporations, as well as individuals; and the regents of the university having represented, that the appointment and incorporation of trustees for each of the said academies, with competent powers to manage the funds already appropriated, and the donations which may be made to such academies, as to superintend the morals and education of the scholars, and the conduct of the principal, masters and teachers, would greatly conduce to their security and prosperity;

Founders of academies may apply to the regents to be incorporated. Therefore, *Be it further enacted by the authority aforesaid,* That upon the application of the founders and benefactors of any academy, now or hereafter to be erected or established

within any of the cities or counties of this state, or as many of them as shall have contributed more than one half in value of the real and personal property and estate, collected or appropriated for the use and benefit thereof, by an instrument in writing, under their hands and seals, to the regents of the university, expressing their request, that such academy should be incorporated, and be subject to the visitation of the regents, nominating in such instrument the trustees, not more than twenty-four or less than twelve, for such academy, and specifying the name by which the said trustees shall be called and distinguished; and whenever any such request shall be made to the said regents, they shall, in every such case (if they conceive such academy calculated for the promotion of literature) by an instrument under their common seal, signify their approbation of the incorporation of the trustees of such academy, named by the founders thereof, by the name mentioned in and by their said request in writing; which said request in writing,

and instrument of approbation by the said regents, shall be recorded in the secretary's office of the state.

XIII. *And be it further enacted by the authority aforesaid,* That the trustees so constituted, shall be the first trustees for the academy for which they shall be appointed, and immediately after recording the said request in writing, and instrument of approbation, shall be legally invested with all the real and personal estate appertaining to such academy, or in any wise given or granted for the use thereof; and the said trustees, from the time of their appointment as aforesaid, and their successors forever thereafter, shall be a body corporate and politic, in deed, fact and name, known and distinguished by the name and stile to be expressed in the said instrument; and by that name shall have perpetual succession, and be capable in the law to sue and be sued, and defend and be defended, in all courts and in all causes, plaints, controversies, matters and things whatsoever; and by the same name and stile, they and their successors shall lawfully hold, use and enjoy the lands, tenements and hereditaments, in any wise appertaining to the academy for which they shall be constituted trustees, and shall and may lawfully have, take, acquire, purchase and enjoy lands, tenements and hereditaments, and use and improve such goods and chattels, in such manner as they shall judge to be most beneficial for such academy: Provided, That

Annual revenue of academies not to exceed 4000 bushels of wheat. the annual revenue or income arising from the real and personal estate of any such academy, shall not exceed the value of four thousand bushels of wheat; any law, usage or custom to the contrary notwithstanding.

XIV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for such trustees, and their successors forever, to have and use a common seal, and the same to alter, break and make a-new at their pleasure. And as often as any three or more of the said trustees shall think fit, and signify their request, the senior trustee actually exercising his office, and residing within three miles of such academy, shall call a meeting of the said trustees, at such convenient time and place as he shall appoint, not less than eight nor more than twelve days from the time of such request, of which previous notice in writing shall be affixed on the door of the academy, and of the church nearest thereto, within two days after such appointment; and at every such meeting the senior trustee shall preside; such seniority in all cases to be determined according to the order of their nomination in the said instrument, or according to the priority of election after all the first trustees shall become extinct: And the major part of such trustees shall always be a sufficient quorum to proceed on business, and shall have full power and authority to adjourn from time to time, not exceeding seven days at any one time, as the duties of their trust may require. And it shall and may be lawful to and for such quorum of the said trustees, when assembled and met in manner aforesaid, or the major part of them, from time to time, to appoint a treasurer and clerk, principal, masters, tutors, teachers and other necessary officers; to ascertain their respective salaries, and to remove and displace any of them at their pleasure; and to make bye-laws for the admission, education, government and discipline of the scholars or students, and the establishment of the price or terms of tuition; for securing, revising and paying out and disposing of the revenues, and in general for conducting and managing the estate, business and affairs of the said academy, and every matter and thing relating thereto, in such manner as they shall judge to be most conducive to its interest and prosperity, and the end of their trust.

Vacancies of trustees how to be filled up.

XV. And in order to preserve the succession of trustees for the said academies respectively; *Be it further enacted by the authority aforesaid,* That whenever a vacancy shall happen in any corporation of trustees, by the death, resignation or refusal to act of any trustee, it shall and may be lawful to and for the trustees of such academy, and they are hereby authorized and required, at any legal meeting of the trustees, to elect and choose a fit person to fill up and supply such vacancy.

XVI. And for the greater encouragement of such academies, and to render them more useful and respectable; *Be it further enacted by the authority aforesaid,* That the regents of the university shall be visitors of such academies, and the chancellor, vice-chancellor, or a committee of the regents, shall, as often as they see proper, visit such academies, to enquire into the state and progress of literature therein.

Scholars educated in any academy, how admitted into colleges.

XVII. *And be it further enacted by the authority aforesaid,* That when any scholar who shall be educated at any of the said academies, on due examination by the president and professors of Columbia college, or any other college, subject to the visitation of the said regents, shall be found competent, in the judgment of the said president and professors, to enter into the sophomore, junior or senior classes, of such colleges respectively, such scholar shall be entitled to an admission into such of the said classes for which he shall be so adjudged competent, and shall be admitted accordingly, at any one of the quarterly examinations of such respective classes.

What trustees of academies to do to entitle their scholars to such admission.

XVIII. *Provided always, and be it further enacted by the authority aforesaid,* That to entitle the scholars of any such academy to the privileges aforesaid, the trustees thereof shall lay before the regents of the said university, from time to time, the plan or system proposed to be adopted, for the education of the students in each of the said academies respectively, in order that the same may be revised and examined by the said regents, and by them be altered or amended, or approved and confirmed, as they shall judge proper.

When regents may allow trustees to elect a president, and such academy to become a college.

XIX. *And be it further enacted by the authority aforesaid,* That whenever it shall appear to the said regents, that the state of literature in any academy is so far advanced, and the funds will admit thereof, that it may be expedient that a president be appointed for such academy; the said regents shall, in such case, signify their approbation thereof, under their common seal, which being entered of record as aforesaid, shall authorize the trustees of such academy to elect a president, who shall have, hold and enjoy all the powers that the president of any college recognized by this act, shall or may lawfully have, hold and enjoy; and such academy thereafter, instead of being called an academy, shall be called and known by the same name it was called while it was an academy, except that the word college shall be used in all cases, instead of the word academy; and be subject to the like rules, regulations, controul and visitation of the regents, as other colleges mentioned in this act.

No president or professor ineligible for his religious tenets.

XX. *And be it further enacted by the authority aforesaid,* That no president or professor shall be ineligible for or by reason of any religious tenet or tenets that he may or shall profess; or be compelled by any law or otherwise, to take any test oath whatsoever; and no professor or tutor of any college or academy recognized

by this act, shall be a trustee of any such college or academy, nor shall any president of any college, or principal of any academy, who shall be a trustee, have a vote in any case relating to his own salary or emoluments; nor shall any trustee, president, principal, tutor, fellow, or other officer of any college or academy, be a regent of the university.

XXI. And be it further enacted by the authority aforesaid, That whenever any person now or hereafter appointed a trustee of any college or academy, shall be appointed or elected a regent of the university, and whenever any person being a regent of the university, shall be appointed or elected a trustee of any college or academy, such person so appointed or elected shall, on due notice thereof, decide and elect in which of the said places he will serve, and by writing under his hand, shall make known such election, whether of refusal or acceptance, to those by whom he was elected, to the end that such appointment may take effect, in case he accept it, or that they proceed to a new appointment, in case he refuse it.

XXII. And be it further enacted by the authority aforesaid, That the act, entitled, An act for granting certain privileges to the college heretofore called King's college, for altering the name and charter thereof, and erecting an university within this state, passed the 1st day of May, 1784; and the act, entitled, An act to amend an act, entitled, An act for granting certain privileges to the college heretofore called King's college, for altering the name and charter thereof, and erecting an university within this state, passed the 26th day of November, 1784, be, and they are hereby severally repealed.

C H A P. LXXXVIII.

An ACT for regulating the Buildings, Streets, Wharfs and Slips, in the City of New-York.

Passed 16th April, 1787.

WHEREAS for the encouragement of the trade and commerce of this state, it is necessary that the buildings, streets, wharfs and slips, in the city of New-York, should be regulated with uniformity, for the accommodation of habitations, shipping and transportation; Wherefore, to remove all impediments or obstruction that may retard so necessary a work,

I. Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That it shall and may be lawful to and for the mayor, aldermen

Common council of New-York to make bye-laws for regulating buildings, streets, wharfs and slips, and commonalty of the city of New-York, in common council convened, from time to time, to make such bye-laws, ordinances, rules and orders, for the better regulating and arranging, with uniformity, such new buildings as shall,

after the passing of this act, be erected for habitations, or for the purposes of trade and commerce; and also, for regulating and altering the streets, wharfs and slips, in such manner as shall be most commodious for shipping and transportation; and also at their will and pleasure, from time to time, to nominate and appoint two or more discreet and intelligent persons to be the surveyors of the buildings, streets, wharfs and slips of the said city, whose office and duty it shall be to direct and see that all buildings, streets, wharfs and slips, to be laid out or altered in the said city, be regulated with uniformity, for the accommodation of habitations, shipping, trade and commerce, according to such bye-laws, ordinances, rules and orders, as, by the com-

mon council of the said city, shall be for that purpose, from time to time, ordained and established; which said surveyors shall respectively, before they enter upon the duties of their said offices, take the following oath, before the mayor or recorder, viz.

I appointed a surveyor of the city of New-York, do swear, in the presence of Almighty God, that I will faithfully, truly and impartially, execute the office of one of the surveyors of the same city.

II. And whereas in the laying out of new lots of ground for buildings, controversies may arise, by reason that a lot or lots, if built upon, to their full extent, would incommode and obstruct some street of the said city, and be hurtful to the trade and health of the inhabitants thereof; Therefore, *Be it further enacted by the authority aforesaid,* That it shall and may be

Common council to
prevent buildings en-
croaching on the
streets.

lawful to and for the mayor, aldermen and commonalty of the said city, in common council convened, to hinder and prevent any building or buildings, that may narrow or encroach upon any street within the said city: And if in the doing thereof, or in the laying out for the future, any streets, wharfs or slips, they shall require for such purposes, the ground of any person or persons, they shall give notice thereof to the owner, or parties interested in such ground, or his, her or their agent or legal representative: And to the end that reasonable satisfaction may be made for all such ground as shall be necessary for the uses aforesaid, the said common council shall and may treat with the owners or persons interested therein, or his, her or their agent or legal representative; and if any such owner or owners shall refuse to treat in manner aforesaid, then, and in such case, it shall and may be lawful to and for the mayor or recorder, and any two or more aldermen, by virtue of this act, by a precept under their hands and seals, to command the sheriff of the said city and county of New-York, to impanel and return, and he is hereby required to impanel and return a jury to appear before the mayor's court of the said city, at any term thereof, not less than three weeks from the date of such precept, to enquire of and assess the damages and recompence due to the owner or owners of such ground, or his, her or their agent or legal representative; and at the same time to summon the owner or owners of such ground, by notice to be left at his, her or their most usual place of abode, to appear before such mayor's court, on the day and at the place in such precept to be specified; which jury being first duly sworn, faithfully and impartially to inquire into and assess the damages in question, and having viewed the premises, if necessary, shall inquire of and assess such damages and recompence, as they shall, under all the circumstances, judge fit to be awarded to the owner or owners of such ground, for their respective losses, according to their several interests and estates therein. And the verdict of such jury, and the judgment of the said mayor's court thereupon, and the payment of the sum or sums of money so awarded and adjudged to the owner or owners thereof, or tender and refusal thereof, shall be conclusive and binding to all intents and purposes, against the said owner and owners, his, her and their respective heirs, executors, administrators and assigns, claiming any estate or interest of, in or to the same ground; and it shall thereupon be lawful to and for the said mayor, aldermen and commonalty of the city of New-York, and their successors, to cause the same ground to be converted to and used for the purposes aforesaid.

IV. And whereas the dirt and soil lying in the streets, doth often prove a common nuisance, and very prejudicial to the health of the inhabitants of the same city ; For remedy whereof, *Be it further enacted by the authority of the Common Council to direct the making common sewers, drains and vaults, paving the streets, and altering, amending and cleaning the same.* *That it shall and may be lawful to and for the mayor, aldermen and commonalty of the said city, in common council convened, by ordinances and bye-laws for that purpose to be made and ordained, from time to time, and in such manner as they shall judge to be most conducive to the health and public convenience, to cause common sewers, drains and vaults to be made and constructed in any part of the said city, and to order and direct the pitching and paving the streets thereof, and the cutting into any drain or sewer already made, or to be made ; and the altering, amending, cleansing and scouring of any street, vault, sink, or common sewer, within the same city. And for the better effecting thereof, it shall and may be lawful to and for the mayor, aldermen and commonalty of the said city, in common council convened, to cause to be made, an estimate or estimates of the expence of conforming to such regulations as aforesaid, and a just and equitable assessment thereof, among the owners or occupants of all the houses and lots intended to be benefited thereby, in proportion, as nearly as may be, to the advantages which each shall be deemed to acquire respectively. And in order that the same may be faithfully and impartially performed, the said common council shall, from time to time, appoint five sufficient and disinterested freeholders for every such purpose, who, before they enter upon the execution of their trust, shall be duly sworn, before the said mayor or recorder, to make the said estimate and assessment fairly and impartially, according to the best of their skill and judgment ; and a certificate in writing of such estimate and assessment being returned to the said common council, and ratified by them, shall be binding and conclusive upon the owners and occupants of such lots so to be assessed respectively ; and such owners or occupants respectively, shall thereupon become, and be liable and chargeable, and they are hereby required, upon demand, to pay to such person as shall be authorised by the said common council to receive the same, the sum at which such house or lot shall be so assessed, to be employed and applied for and towards the making, altering, amending, pitching, paving, cleansing and scouring such streets, and making, constructing and repairing such vaults, drains and sewers as aforesaid ; and in default of payment thereof, or any part thereof it shall and may be lawful to and for the mayor, recorder and aldermen of the same city, or any five of them, of whom the mayor or recorder always to be one, by warrant under their hands and seals, to levy the said sum and sums of money so assessed, by distress and sale of the goods and chattels of the owner or occupant of such house or lot so assessed, and refusing or neglecting to pay the same ; rendering the overplus, if any there be, after deducting the sum assessed, and the charges of distress and sale, to such owner or occupant respectively, or their legal representatives.*

V. *Provided always, and be it further enacted by the authority aforesaid, That nothing in the last mentioned clause of this act contained, shall be construed to affect any contract or agreement that hath been or shall be made between any landlord and tenant, respecting the payment of any such charges or repairs, but they shall be answerable to each other in the same manner as if this act had never been made. And further, In case any money so from time to time to be assessed for the services aforesaid, shall be paid by any person, when by agreement or by law the same ought to have been borne*

and paid by some other person, that then it shall and may be lawful to and for the person so paying the same, and he shall be, and hereby is empowered and authorized to sue for and recover the same, with interest and costs of suit, in any court having lawful cognizance thereof, as so much money paid for the use of the person for whom or for whose use the same shall have been paid; and the assessment aforesaid, with proof of payment, shall be conclusive evidence to such court, and judgment and execution shall be awarded accordingly.

VI. And whereas more effectually to accommodate the trade, and preserve the health of the citizens, it is necessary, in certain parts of the city, to level adjoining lots, by raising some and reducing others, in order to draw away the stagnate water and filth, and render the streets dry, and the passage easy and convenient; and it frequently happens, that there are vacant lots, owned by persons who refuse to contribute to any expence with respect to their lots, or the streets on which they are bounded, however detrimental such refusal may prove to the proprietors of the adjacent lots, and the public good; For remedy whereof, *Be it further enacted by the authority aforesaid,*

In general regulation for levelling streets, owners of lots to pay expence.

That when in any such case a general regulation shall be judged necessary, in any part of the city, and be ordered and directed by any ordinance or bye-law of the said mayor, aldermen and commonalty of the said city, in common council convened, for raising, reducing, levelling or fencing in any such lot or lots as aforesaid, it shall and may be lawful to and for the said common council, to cause an estimate to be made of the whole expence of conforming to such regulation, with respect to each lot which the owner thereof shall refuse or neglect to put in the order thereby required; which estimate shall be made and certified under the hands and seals of five sufficient freeholders, to be appointed for that purpose, and sworn in manner aforesaid; and the same estimate being duly returned to, and approved by the said common council, they shall take order for advertising the same, in two or more of the public news-papers printed in the said city, for three weeks, thereby requiring the owners of such lots respectively, to pay the sum at which the said lots shall be so assessed, to the treasurer or chamberlain of the said city, to defray the expence of the intended work; and that if default shall be made in such payment, such lot will be sold at public auction, at a day and place therein to be specified, for the lowest term of years at which any person shall offer to take the same, in consideration of advancing the sum assessed on the same, for the expence aforesaid. And if, notwithstanding such notice and demand, the owner or owners should refuse or neglect to pay such assessment, with the charge of appraisement and advertisement, then it shall and may be lawful to and for the said common council, to cause the said lot to be sold at public auction, for a term of years, for the purposes and in the manner expressed in the said advertisement, and to give a declaration of such sale to the purchaser thereof, under the common seal of the said city; and such purchaser, his executors, administrators and assigns, shall, by virtue thereof, and of this act, lawfully hold and enjoy the same, for his and their own proper use, against the owner or owners thereof, and all claiming under him or them, until his term therein shall be fully complete and ended; being at liberty to remove all the buildings and materials which he, she or they shall erect or place thereon, but leaving the ground in sufficient fence, and with the street or streets fronting the same, in the order required by the said regulations; any law, usage or custom to the contrary thereof notwith-

standing. Provided always, That if, after defraying the actual expence of conforming any lot, so to be sold for a term of years, to the regulations aforesaid, and deducting all reasonable charges attending the same, a surplus of the purchase-money, bidden or given therefore, at such auction, shall remain in the hands of the chamberlain or treasurer of the said city, the same shall forthwith be rendered to the owner or owners of such lot or lots respectively, or his, her or their respective legal representatives.

If the first estimate proves insufficient to defray the expences, a second may be made. VII. *And be it further enacted by the authority aforesaid,* That if upon the completion of any such regulation as aforesaid, it shall appear to the mayor, aldermen and commonalty of the said city, in common council convened, that a greater sum of money hath been bona fide expended in making such regulation, than the sum mentioned in the estimate so made as aforesaid and actually collected, it shall and may be lawful to and for the said common council, to cause a further assessment to be made of the sum, which such bona fide expenditures shall exceed the sum so estimated and collected as aforesaid, upon and among the owners or occupants of all the houses and lots before assessed as aforesaid, and to cause the same to be collected in the same manner as herein before directed. And further, That in case the sum actually expended shall be less than the sum expressed in such estimate, and actually collected as aforesaid, the surplus shall be forthwith rendered to the respective persons from whom the same were so collected and received as aforesaid, or his, her or their respective legal representatives.

C H A P. LXXXIX.

An ACT for the more speedy Recovery of Debts to the Value of Ten Pounds.

Passed 17th April, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,

All actions for debts not exceeding ten pounds, cognizable before justices of the peace. That from and after the first day of June next, all actions of debt, detinue, account, covenant, trespass, and trespass on the case, wherein the sum or balance due, or thing demanded, shall not exceed ten pounds, current money of this state, shall be, and hereby are made cognizable before any justice of the peace of any city or county of this state; and every such justice shall be, and hereby is respectively authorized and empowered, to hear, try and determine all such causes and actions, according to law and equity; and shall and may hold a court for the trial thereof, and is hereby vested with all such power and authority, for the purpose aforesaid, as is usual in courts of record in this state; and shall sign all process to be issued out of such court.

Justice how to proceed for the recovery of debts. And further, That every such justice of the peace, upon application to him made for the recovery of any such debt, damages or demand, shall issue a summons or warrant, as the case may require, directed, to some constable, or other proper officer of the city, town or place where the defendant dwells, or can be found, commanding him, when a summons is issued, to summon the defendant to appear before such justice, at a certain time and place in the same summons to be expressed, not less than six nor more than twelve days from the time of issuing such summons, to answer the plaintiff of the plea in the same summons to be mentioned; and when a warrant is issued, then commanding the constable or other officer, to take the defendant, and bring him or her forthwith be-

fore such justice, to answer the plaintiff of the plea in the same warrant to be mentioned, and upon the return of such summons, if the same be duly served, or upon bringing the defendant before such justice, by virtue of any such warrant, or at such other time and place, as the same justice shall think reasonable to appoint, not exceeding six days thereafter, the same justice shall proceed to hear and examine the allegations and proofs of the parties, plaintiff and defendant, and within four days thereafter, give judgment thereon in such manner as shall appear to him to be agreeable to law and equity, together with costs of suit, as hereafter allowed.

First process against freeholders and inhabitants having families, to be by summons.

II. *And be it further enacted by the authority aforesaid,* That the first process against all freeholders and inhabitants having families (except as hereafter is excepted) shall be by summons, which shall be served at least six days before the time of appearance mentioned therein, by reading the same summons to the defendant, and delivering to him or her a copy thereof, when required, if he or she shall be found, and if not, by leaving a copy thereof, at his or her house or place of abode, in the presence of some one of the family, of suitable age and discretion, who shall be informed of the contents thereof; and the constable or officer serving such summons shall, upon the oath of his office, indorse thereupon the time and manner he executed the same, and sign his name thereto. And in case the defendant does

If the defendant does not appear, and the process was served on him personally, the justice to proceed to trial.

But if not personally served, a warrant or new summons to be issued.

not appear at the time and place appointed in such summons, and it shall appear by the return endorsed thereon, that the summons was duly served upon the person of the defendant, in the manner aforesaid, and no sufficient reason shall appear to the justice, why the defendant does not appear at the time appointed, then the said justice who issued the said summons shall proceed to hear, and try and determine the cause, in the same manner as if the defendant had appeared; but if such summons was served only by leaving a copy thereof at the house or place of abode of the defendant, as aforesaid, and the defendant does not appear at the time and place appointed in such summons, and no sufficient reason shall appear to the justice, why the defendant does not appear, then the said justice shall issue a warrant against such defendant, in the manner aforesaid, and proceed as above directed, unless the plaintiff shall elect to have a new summons against such defendant. And in all cases where a sufficient reason shall appear to the justice, why the defendant does not appear at the time and place appointed in the summons, the justice shall give the defendant such further time as he shall think reasonable, and at such time so given the justice shall and may proceed as aforesaid.

When a warrant is issued, and the justice who issued it is absent or unable to try the cause, the next justice may try it.

III. *Provided always, and be it further enacted by the authority aforesaid,* That in all cases where a warrant shall be issued by virtue of this act, and upon service thereof, the justice who issued the same shall be absent, or unable to hear and try the cause, it shall and may be lawful for the constable, or other officer serving such warrant, to carry the defendant before the next justice of the city or county where the justice who issued the warrant, shall reside, and such other justice shall take cognizance of, and hear, try and determine the cause, in the same manner as he could or might have done, if he had issued the warrant, by virtue of which the defendant

In all other cases, he who issues the process shall try the cause.

shall be taken; but in all other cases, where any process shall be issued in pursuance of this act, and served on the defendant, for any debt, damages or demand, of what na-

Defendant may set off any demand against the plaintiff.

future soever, the cause shall be tried before the justice who first issued such process, and not before any other justice; and the defendant, if he or she has any account or demand against the plaintiff in such action, shall and may plead and set off the same against the debt or demand of the plaintiff.

When there is danger of the plaintiff's losing his debt, a warrant may issue.

IV. *And be it further enacted by the authority aforesaid,* That if any plaintiff, or his or her attorney, so applying for process, shall prove, upon oath, to the satisfaction of the justice, that if such process be by summons against any such freeholder or inhabitant having a family, the plaintiff will be in danger of losing his debt or demand thereby, or doth really and sincerely believe that such freeholder or inhabitant will depart the city or county wherein he or she doth reside, then the justice shall issue a warrant, in such manner as is above directed.

By agreement of parties, cause may be tried without process.

V. *And be it further enacted by the authority aforesaid,* That where any parties shall agree to enter an action before any justice, without any process, the justice shall proceed to trial, in the same manner as if a summons or warrant had issued.

When a warrant is issued, trial may be adjourned at the request of either party, on giving security.

VI. *And be it further enacted by the authority aforesaid,* That in all cases where a warrant shall be issued, if the plaintiff or defendant shall require a longer time than is first appointed by the court, to try the said cause, and will if required, give sufficient security to appear and stand trial on such other day as shall be appointed, then the justice is hereby empowered and required to adjourn the trial of such cause, to any day he shall judge most convenient, not exceeding twelve days, nor less than three days, unless the justice and parties shall otherwise agree. Provided always, That where

Plaintiff being a non-resident, may have a warrant on giving security.

the plaintiff in any cause of action to be brought by virtue of this act, shall be a non-resident of the county, and shall give security to pay the debt or damages, and costs of suit, in case judgment shall be given against him, that then he may have a warrant returnable immediately; and the justice before whom such cause is to be tried, shall not adjourn the same for more than three days, unless the parties agree to allow a longer time. And if any adjournment be made without the consent of the plaintiff, then the defendant shall give sufficient security for his or her personal appearance, on the day to which such adjournment shall be made, and in default of such appearance, to pay the debt and costs, if judgment shall be given against him or her; and in default of giving such security, the justice shall proceed to trial without an adjournment.

No person to be proceeded against by summons out of his city or county.

VII. *And be it further enacted by the authority aforesaid,* That no person shall be proceeded against by summons, out of the city and county where he or she does reside.

Actions on this act may be tried by a jury.

VIII. *And be it further enacted by the authority aforesaid,* That in every action that shall hereafter be brought in this state, by virtue of this act, it shall be lawful for either of the parties to the suit, or the attorney of either of them, after issue joined (and before the court shall proceed to enquire into the merits of the cause) to demand of the said court, that such action be tried by a jury; and upon such demand, the said justice holding such court is hereby required

Justice to issue a venire to a constable, to summon twelve men.

to issue a venire, directed to any constable, or other proper officer, of the city, town or place where the said cause is to be tried, commanding him to summon twelve good and

la ~~u~~ful men, being freeholders or freemen of such city, or being freeholders of such town or place, where the said cause is to be tried, and who shall be in no wise of kin to the plaintiff or defendant, nor interested in such suit, to be and appear before such justice issuing such venire, at such time and place as shall be expressed in such venire, to make a jury for trial of the action between the parties mentioned in the said venire; which constable or officer shall, at the return of the said venire, return a panel of the names of the jurors

Six of them to be hal- he shall so summon by virtue thereof, and the names of lotted-for the trial. each person so impannelled, shall be written on several and distinct pieces of paper, as nearly of one size as may be, and shall be delivered to the said justice, before whom such action is to be tried, by the constable, or other officer returning such panel, and shall, by the said constable, or other officer be rolled up, all as near as may be, in one and the same manner, and put together in a box, or some convenient thing; and on the trial of such cause, such justice, or such indifferent person as he shall appoint for that purpose, shall draw out six of the said papers, one after another; and if any of the persons whose names shall be so drawn shall not appear, or shall be challenged and set aside, then such further number thereof shall be drawn, as shall make up the number of six who do appear, after all legal causes of challenge allowed by the said justice; unless the parties agree that the said constable shall summon six men at his discretion; and the said six persons so first drawn and appearing, and approved by the court as indifferent, shall be the jury who shall try the cause, to each of whom the said justice shall administer the following oath.

Parties may agree that constable sum- mon six at his discretion.

YOU do swear, in the presence of Almighty God, That you will well and truly try the matter in difference between plaintiff, and defendant, and a true verdict will give, according to evidence.

And after the said jury have taken the oath aforesaid, they shall sit together, and hear the several proofs and allegations of the parties, which shall be delivered in public, in their presence; and to each of the witnesses on the said trial, the said justice shall administer the following oath, viz.

YOU do swear, in the presence of Almighty God, That the evidence you shall give in this matter in difference between plaintiff, and defendant, shall be the truth, the whole truth, and nothing but the truth.

And after hearing the proofs and allegations, the jury shall be kept together in some convenient place, until they all agree upon a verdict; and for which purpose a constable shall be sworn, and to whom the said justice shall administer the following oath, viz.

YOU do swear, in the presence of Almighty God, That you will, to the utmost of your ability, keep every person sworn on this inquest together in some private and convenient place, without meat or drink; you will not suffer any person to speak to them, nor speak to them yourself, unless by order of the justice, unless it be to ask them whether they have agreed on their verdict, until they have agreed on their verdict.

And when the jurors have agreed on their verdict, they shall deliver the same to the justice in the same court, who is hereby required to give judgment thereupon, and to award execution in manner herein after directed. Pro-

No ex parte affidavit or oath of party, to be allowed without consent.

vided always, That no oath of either party, or ex parte affidavit of any other person, shall be allowed or given in evidence in any such action, unless the parties agree to allow of such evidence.

Penalty on jurors and witnesses for default, how to be recovered.

IX. *And be it further enacted by the authority aforesaid,* That every person summoned and drawn as a juror or subpoenaed as a witness, who shall not appear, or appearing, shall refuse to serve, or to give evidence in any such action,

shall forfeit and pay, for every such default or refusal (unless some reasonable cause be proved, on oath, to the satisfaction of the said court) such fine or fines, not exceeding the sum of four pounds, nor less than five shillings, as the said court shall think reasonable to impose; and the said court is hereby authorised and required to issue a warrant to any constable, or other proper officer, to levy the same of the goods and chattels of the offender, and for want thereof, to take and convey him or her to the gaol of the city or county wherein the offence shall have been committed, or for want of a gaol in such city or county, then to the nearest gaol, there to remain until he or she pay such fine, together with the costs attending the same. And the keeper of such gaol is hereby commanded to keep such offender in safe custody, in such gaol, until such fine, together with the costs, shall be paid. Provided always, That no such fine or fines shall be imposed, unless oath shall first have been made, before the court, by some credible person, that such juror or witness so in default, hath been lawfully summoned or subpoenaed as aforesaid; all and every of which said fines, when recovered, shall be delivered by the said court, to the overseers of the poor, for the use of the poor of the town or place where the same shall be levied.

Costs how to be awarded; and debt and damages levied and paid.

X. *And be it further enacted by the authority aforesaid,* That if the plaintiff, other than executors or administrators, in any such action, shall be nonsuited, or discontinue, or withdraw his or her action, without the consent of the defendant, then judgment shall be given against such plaintiff, for the costs accrued; or if he or she shall appear to be indebted to the defendant, then judgment shall be given against him or her, for the debt or damages, and costs, as the case may require; and whenever judgment shall be given against either plaintiff or defendant, in any of the before mentioned actions, the said court shall grant execution thereupon, directed to one of the constables, or other proper officer of the city, town or place where the party dwells, or can be found, commanding him to levy the debt or damages and costs, of the goods and chattels of the person against whom such execution should be granted; and for want of sufficient goods and chattels whereon to levy the

same, to take the $\frac{1}{4}$ body of the person against whom such execution shall be granted, and him or her to convey to the gaol of such city or county; which said constable, or other proper officer, after taking such goods and chattels into his custody, by virtue of such execution, shall immediately give public notice, by an advertisement, signed by himself, and put up at three public places in such city, town or place where such goods and chattels shall be taken, of the time and place when and where they will be exposed to sale, at least five days before the time appointed for selling them, and therein describe the goods and chattels so taken; and at the time and place so appointed for selling them, shall expose them to sale by public vendue, to the highest bidder, and pay the debt or damages, and costs levied, to the justice who issued the execution, returning

$\frac{1}{4}$ Altered, 12th sess. ch. 24. sec. 15.

proper officer, after taking such goods and chattels into his custody, by virtue of such execution, shall immediately give public notice, by an advertisement, signed by himself, and put up at three public places in such city, town or place where such goods and chattels shall be taken, of the time and place when and where they will be exposed to sale, at least five days before the time appointed for selling them, and therein describe the goods and chattels so taken; and at the time and place so appointed for selling them, shall expose them to sale by public vendue, to the highest bidder, and pay the debt or damages, and costs levied, to the justice who issued the execution, returning

the overplus, if any, to the owner ; and for want of goods and chattels whereon to levy, the said constable, or other proper officer, shall, according to the tenor of the said execution, take the body of the person against whom the same execution shall be granted, and convey and deliver him or her, to the keeper of the common gaol of the city or county, which keeper is hereby commanded to keep such person in safe custody, in the common gaol aforesaid, until the debt or damages, with costs, shall be fully paid, or until he or she shall be from thence delivered by due course of law. Provided nevertheless, That no execution of any judgment given by virtue of this act, shall issue against any freeholder or inhabitant having a family, in less than forty days after giving the said judgment, unless the party in whose favour judgment shall be given, shall make it appear to the satisfaction of the said justice, on his or her own oath, or the oath of some other person, that such plaintiff or plaintiffs, will be in danger of losing the debt or damages, if such delay be allowed ; in which case the said justice shall issue execution immediately, as herein before directed, unless the party against whom such judgment shall be given, shall thereupon give security to the party in whose favour judgment was given, that he or she will pay the debt or damages, and costs, before, or surrender himself or herself in execution, at the expiration of forty days.

Penalty on constable for neglecting to levy execution.

XI. *And be it further enacted by the authority aforesaid,* That in case any constable, or other proper officer to whom any execution shall be delivered, shall not, within thirty days after receiving such execution, levy the same on the goods and chattels of the person against whom such execution shall be granted, and in ten days thereafter pay the debt and costs so levied, into the hands of the justice who issued the same, or in case of his death or removal from office, to the person in whose favour the execution was granted ; or if no goods nor chattels can

be found, whereon to levy, then if the said constable or other officer shall not take the body of the person against whom such execution was granted, if to be found, within thirty days from the receipt of such execution as aforesaid ; then, and in every such case, the said constable or other officer, shall be holden to pay the amount of such execution, to be recovered by an action of debt, with costs, by the person in whose favour such execution was granted, in which case execution shall issue forthwith. Provided always, That neither this act, nor any thing herein contained, shall be deemed or construed to extend to any action wherein the people of this state shall be concerned, or where the title of any lands shall, in any wise, come in question, or to any action of assault, and battery, or of slander ; not to matters of account where the sum total of such accounts exceed in the amount or value thereof, the sum of eighty pounds, and that account proved to the satisfaction of the said court.

XII. *And be it further enacted by the authority aforesaid,* That when in any action of trespass to be brought by virtue of this act, the defendant or defendants shall justify on a plea of title, the defendant or defendants shall commit such plea of justification to writing, and having signed the same in the presence of such justice, shall deliver such plea to the justice, who shall then countersign the same, and deliver it to the plaintiff or plaintiffs ; and that it shall and may be lawful to and for such plaintiff or plaintiffs, to commence and prosecute an action for such trespass against such defendant or defendants, in the court of common pleas of the county in which such trespass shall have

been committed; and if such plaintiff or plaintiffs shall recover any damages in such action, the defendant or defendants shall be liable to pay to such plaintiff or plaintiffs, double costs. And on every trial to be had for such trespass, the plea signed by such defendant or defendants, shall be conclusive evidence that the defendant or defendants relied on his, her or their title, to justify such trespass. And that every justice to whom a plea of justification shall be tendered, shall, before he shall receive such plea, exact from the defendant or defendants, together with one sufficient surety, a recognizance in the sum of twenty pounds; Conditioned, That if such plaintiff or plaintiffs shall commence a suit before the next court of common pleas, for the recovery of damages for such trespass, such defendant or defendants shall appear, and put in special bail in such court, within twenty days after the first day of the then next term of the said court; and that in every case in which such plea shall be tendered, and the defendant or defendants shall not forthwith enter such recognizance, the justice shall proceed in the same manner as if such plea had not been tendered.

Penalties not exceeding ten pounds, XIII. *And be it further enacted by the authority aforesaid,* That all and every sum and sums of money, not exceeding the value of ten pounds, to be sued for and recovered before a justice,

in any court of record, by virtue of any law of this state, shall be, and hereby are made cognizable before any one justice of the peace, in manner aforesaid; any thing in this or any other act to the contrary in any wise notwithstanding. And also, That where in any city, town or

place, no constable, or other proper officer shall be chosen Where process to issue to the constable or appointed, or the constable or other proper officer be of the next town. absent, or where a process shall be issued against such constable or other proper officer of any city, town or place; that then, and in

such case, the justice, upon application made, shall and may direct the process or execution to the constable, or other proper officer of the next adjoining town or place, living nearest where the defendant dwells, or can be found, who is hereby required to execute the same.

XIV. *And be it further enacted by the authority aforesaid,* That when any process shall be issued by any justice, by virtue of this act, the constable of the city, town or place, to whom such process shall be directed, shall proceed agreeable to this act, and execute such process in his own proper person, unless the justice who issued such process shall, at the request of the plaintiff, judge it expedient to depute some other proper person who will voluntarily undertake to execute the same, without fee or reward; but no person shall be so deputed to impanel or summon any jury.

XV. *And be it further enacted by the authority aforesaid,* That no greater or other costs shall be allowed, taxed or taken, in actions brought by virtue of this act, than the following: Justices fees; A summons, nine-pence: A warrant, one shilling: Judgment, one shilling: Administering every oath, six-pence: Subpœna for each witness, six-pence: Issuing the venire facias, to summon a jury, one shilling and six pence: Swearing the jury, one shilling: Every execution, one shilling and six-pence. Every witness attending and sworn, one shilling. Constable, or other proper officer, for serving a warrant or summons, notifying the plaintiff to trial, or serving an execution, mileage for one mile, or under, one shilling; for every mile more, six-pence. Provided, That on all precepts to be issued by virtue of this act, the fees for serving be computed only from the place of abode of the defendant, or where he shall be found, to the place where the precept is returnable: Serving

every execution, for every pound, one shilling : Summoning every jury, three shillings. Jurors fees : For all causes tried, one shilling per man : When summoned and attending, and not trying the cause, six-pence per man. To the constable, or other person serving subpœna, one shilling for each witness. Provided, That the whole costs to be recovered or allowed in any cause or action, shall not exceed the sum of two pounds.

XVI. *And be it further enacted by the authority aforesaid,* That nothing herein contained shall extend to oblige any justice of the peace, being a member of the senate or assembly, or any judge of any county court, to take cognizance of any actions by virtue of this act ; but that they shall be at liberty, at all times, to act therein, or not, at their discretion.

XVII. *And be it further enacted by the authority aforesaid,* That no judgment, order or proceeding whatsoever, to be had or made by virtue of this act, shall be removed by any writ of error or false judgment. And further,

That no justice of the supreme court shall grant or allow any certiorari, or other process, to remove any judgment, order or proceeding whatsoever, to be had by virtue of this act, unless the party applying for such certiorari shall, within thirty days after such judgment given, make affidavit, satisfying such justice of the supreme court, that there is reasonable cause for granting such certiorari, to remove such judgment, either for error therein, or for some unfair practice of the justice who shall have tried the cause ; which shall be particularly specified in the said affidavit, and which affidavit may be made before one of the justices of the supreme court, or one of the judges of the court of common pleas of the county where such judgment shall be given, or before one of the commissioners for taking affidavits, to be read in the supreme court ; and such affidavit shall be left with the justice of the supreme court, who may allow such certiorari, in order that the adverse party may obtain a copy thereof. And if any certiorari, or other writ, shall be granted or issued otherwise than is above mentioned, the same shall be void, and of none effect. And further, That no execution upon any judgment to be given by virtue of this act, shall be prevented or stayed by any certiorari, or other writ, in case the party in whose favor such judgment shall be given, shall give such security as may be satisfactory to the justice by whom such judgment shall be given, to restore the debt or damages for which such judgment shall be obtained, with the interest and costs, in case such judgment shall be reversed ; and if any judgment to be given by virtue of this act, shall be removed into the supreme court, by certiorari or otherwise, and be there confirmed, then the party procuring such certiorari, shall pay to the adverse party, all costs of defending such suit in the supreme court, to be taxed ; and the party entitled to such costs, shall and may have execution for the same, out of the said supreme court, against the body, or goods and chattels of the party who ought to pay the same ; But if such judgment shall be reversed, then the party procuring such certiorari, shall, in like manner, recover his or her costs, to be taxed and recovered as aforesaid.

Writs of certiorari how obtained.

Not to stay execution, if the party gives security to restore.

Costs on affirmance or reversal of judgment, and how recovered.

Defendants neglecting to set off their accounts, precluded from recovering them in any other action.

XVIII. *And be it further enacted by the authority aforesaid,* That in all causes to be brought in pursuance of this act, if the defendant or defendants in such suit or action, shall neglect or refuse to plead and give in evidence, his, her or their account or demand, if any he, she or they have,

against such plaintiff or plaintiffs; then the defendant or defendants, so neglecting or refusing to plead and give in evidence, his, her or their accounts or demands as aforesaid, shall forever thereafter be precluded from having or maintaining any action or actions against such plaintiff or plaintiffs, for the recovery of such account or demand, or any part thereof. Provided always, That where the balance found to be due by the defendant exceeds the sum of ten pounds, that in every such case the defendant shall not be precluded or barred from recovering his account or demand against such plaintiff, in any other court of record having cognizance of the same.

Unless the balance exceeds ten pounds.

When a justice may postpone a trial.

XIX. *And be it further enacted by the authority aforesaid,* That in case the defendant shall make oath that he or she cannot, for want of some material evidence or witness, safely proceed to trial, the justice shall, in such case, postpone the trial for such reasonable time as will enable the defendant to procure such evidence or witness: Provided such time shall not exceed three months. And provided also, That such defendant or defendants, before he, she or they shall be entitled to have the trial postponed as aforesaid, shall give security to the said justice, to appear and answer the said action, and to pay the debt and damages, and costs, in case judgment shall be given against him, her or them. Provided also, That in any suit or action to be brought by virtue of this act, if either the plaintiff or defendant shall request an adjournment, he shall not be entitled thereunto, unless the party requesting such an adjournment (after having seen the account or demand of the adverse party) shall, if required, exhibit his or her account or demand, or state the nature thereof, as far forth as may be in his or her power, to the satisfaction of the justice before whom the cause is to be tried; any thing in this act to the contrary notwithstanding.

Council to appoint assistant justices in the city of New York.

Explained, 14th sess. ch. 12.

XX. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the person administering the government of this state for the time being, by and with the advice and consent of the council of appointment for the time being, by commission under the great seal, from time to time, to constitute and appoint such and so many proper persons in the city and county of New-York, as they may think necessary, to hear, try and determine causes in the said city and county, by virtue of this act, by the name of assistant justices; and each and every of the persons so constituted and appointed, shall be, and hereby are vested with the like and the same power and authority, in the same city and county, with respect to hearing, trying and determining causes of the value of ten pounds and under, as are given to or vested in the justices of the peace in the several counties of this state, by virtue of this act.

No justice keeping a tavern, to try any cause.

Constables in Albany, Ulster, Suffolk, Orange, Montgomery, Washington or Richmond, to execute process in any part of the county.

XXI. *And be it further enacted by the authority aforesaid,* That no justice of the peace, nor any person so to be constituted and appointed as aforesaid, being a tavern-keeper, or innkeeper, shall try any cause by virtue of this act.

XXII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for any constable in the counties of Albany, Ulster, Suffolk, Orange, Montgomery, Washington or Richmond, to execute any summons or precept to be issued in pursuance of, and by virtue of this act, in any city, town, manor, district or precinct, in the

county in which such summons or precept was issued, although the defendant or defendants shall not reside in, or be found in the city, town, manor, district or precinct, in and for which such constable shall be elected; any thing in this act contained to the contrary thereof in any wise notwithstanding.

XXIII. And whereas sundry persons make a practice of pleading in courts held by a justice, and because of the emoluments therefrom arising, are induced to promote suits: For the prevention whereof, *Be it further enacted*

Attornies in suits *brought by virtue of this act, to plead without fee.* *by the authority aforesaid,* That no person so practising, shall be permitted by any justice to prosecute, defend, plead or counsel, in any suit or action to be tried by virtue of this

act, unless such person so offering or appearing to prosecute defend, plead or give counsel as aforesaid, shall previously swear, before such justice, that he has not received or taken any fee or reward for the same, either directly or indirectly, nor any other person to or for his use; and that he will not, directly or indirectly, receive or take any fee or reward for the same, either by himself, or by any other person, to or for his use.

XXIV. *And be it further enacted by the authority aforesaid,* That the act, entitled, An act to empower justices of the peace, mayors, recorders and aldermen, to try causes to the value of ten pounds and under, and to repeal sundry acts therein mentioned, together with the several acts therein mentioned; and the act, entitled, An act supplementary to the act, entitled, An act to empower justices of the peace, mayors, recorders and aldermen, to try causes to the value of ten pounds and under, and to repeal sundry acts therein mentioned, and the seventh enacting clause of the act, entitled, An act to compel collectors and constables to give security, shall be, and hereby are, from and after the first day of June next, repealed; but all suits which shall be commenced before the said first day of June next, and be then depending before any mayor, recorder, alderman or justice of the peace within this state, by virtue of any of the acts hereby repealed, shall and may be prosecuted to judgment and execution, as fully and effectually as if this act had not been made.

C H A P. XCII.

‡ 9th sess. ch. 25. *An ACT to amend an Act, entitled, † An Act to regulate the Militia.*

Passed 18th April, 1787.

I. *BE it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That it shall and may be lawful to and for the brigadier, or commanding officer of any brigade, and the commanding officer of any regiment not annexed to any brigade respectively, if he shall deem it expedient, to direct the light-infantry of such brigade or regiment, to uniform themselves in rifle-frocks and overalls.

II. *And be it further enacted by the authority aforesaid,* That instead of the annual training by brigades, directed in and by the said act, entitled, An act to regulate the militia, it shall and may be lawful for one or more of the regiments of any brigade, if the brigadier, or commanding officer of the brigade shall direct it, to rendezvous separately at such of their regimental parades, as shall be designated in brigade orders for that purpose; at which parades the adjutant-general shall attend, and perform the duties enjoined on

him in and by the said act, with respect to the brigades. That the light-infantry companies of such regiments as may be excused from attending at the brigade parade, shall rendezvous with their respective regiments, and shall, together with the cavalry and artillery companies of such brigade, perform the like duties as are in and by the said act required, unless otherwise directed by the brigadier, or commanding officer of the brigade. Provided, That instead of the light-infantry, cavalry and corps of artillery continuing four days in service, they shall not be compelled to continue together any longer than in the other militia.

III. And whereas disputes have arisen respecting the rank of commissioned officers of the same grade, appointed on the same day, and the mode prescribed in and by the said act, is, in many cases, found inexpedient, and productive of inconveniences: Therefore, *Be it further enacted by the authority aforesaid*, That instead of the rank of officers of the same grade being determined by the numbering of their commissions, as directed in and by the act hereby to be amended, it shall and may be lawful to and for the commander in chief, from time to time, whenever he shall deem it necessary, to appoint a board of officers, consisting of not less than three, to determine and report to him respecting any dispute concerning rank which shall or may have arisen; which report being approved by the commander in chief, shall establish such disputed rank, according to the determination of such board.

IV. *And be it further enacted by the authority aforesaid*, That the fifth section of the said hereby amended act, shall be, and the same is hereby repealed.

V. *And be it further enacted by the authority aforesaid*, That when and as often as forty men of the enrolled militia in the city and county of New-York (excepting such as shall be enrolled in the cavalry, artillery or light-infantry) shall incline to arm, accoutre and uniform themselves as a company of grenadiers, it shall and may be lawful to and for the brigadier, or officer commanding the brigade within the limits of which any such company shall be inclined to form, to direct such company to be formed, and to be officered by such captain, lieutenant and ensign of the regiment in which such company shall be proposed to be formed, as a majority of the field-officers of such regiment shall choose for that purpose. And every such company to be formed, shall be considered as one of the companies composing such regiment; and after such establishment thereof, be armed, accoutred and uniformed as grenadiers, and do and perform the like services, and be subject to the penalties as are directed and prescribed in and by the act hereby amended, respecting the light-infantry.

VI. *And be it further enacted by the authority aforesaid*, That all captains, lieutenants and ensigns of the enrolled militia, except in the cities of New-York and Albany, who shall be hereafter appointed, shall reside in the beats of the respective companies to which they are appointed.

VII. *And be it further enacted by the authority aforesaid*, That all fines which shall be imposed in any regiment, corps, company or troop, shall be paid into the hands of the paymaster, or person acting as such, of such regiment, corps, company or troop, and be paid and appropriated by warrant under the hands of a major part of the field-officers, or the commanding officer of the corps, or captain or commanding officer of the company or troop, as the case may be, for the purposes of providing colours, drums and fifes, for their respective regiments, corps, companies and troops, and for

the purchasing and providing arms and accoutrements for such of the men of the same respective regiments, corps, companies and troops as are or shall be unable to furnish and provide themselves therewith; and that it shall be the duty of the paymaster, or person acting as such, of each respective regiment, corps, company or troop, once in every year, to render an account to the brigadier, or officer commanding the brigade, of all his receipts and expenditures, in pursuance of this act.

VIII. *And be it further enacted by the authority aforesaid,* That the provision contained in the seventeenth section of the said act, entitled, An act to regulate the militia, and the proviso thereto annexed, relative to persons

See 11th sess. ch. 95. who have served as officers in the line of the army of the United States, during the late war, is hereby extended to

all officers who have heretofore served in the militia of this state, or in the militia of the late colony of New-York.

C H A P. XCIV.

† 6th sess. ch. 1. *An ACT to amend an Act, entitled, † An act relative to Debts due to Persons within the Enemy's Lines; and another Act, entitled, An act to explain and amend the Act, entitled, † An act relative to Debts due to Persons within the Enemy's Lines, passed 12th July, 1782.*

‡ 8th sess. ch. 12.

Passed 20th April, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That all persons described in the fifth section of the said first mentioned act, and the executors and administrators of such persons, indebted by simple contract, bill single or penal, or any other obligation, mortgage, security or demand whatsoever, to any person or persons described in the said fifth section of the act aforesaid, or to the executors or administrators of such person or persons, shall be, and hereby are discharged from any interest which may have become due upon any such contract, bill, obligation, mortgage or securities, since the first day of January, one thousand seven hundred and seventy-six, inclusively, to the first day of May, in the year one thousand seven hundred and eighty-six. Provided, That nothing in this clause contained, shall be deemed to operate as a discharge of any interest which may have accrued on any such bill, obligation, mortgage or other security, executed since the first day of January, one thousand seven hundred and seventy-seven.

II. *And be it further enacted by the authority aforesaid,* That the said persons so indebted as aforesaid, their executors or administrators, shall be obliged to pay the debts or sums by them owing (after such deduction of interest as aforesaid) to the person or persons aforesaid, their executors or administrators, in the lawful current money of this state, in three yearly instalments, and not otherwise; to wit: One third part thereof on or before the first day of May, in the year one thousand seven hundred and eighty-eight; another third part thereof on or before the first day of May, in the year one thousand seven hundred and eighty-nine; and the other third part thereof on or before the first day of May, in the year one thousand seven hundred and ninety; with interest upon the amount of such debts or sums now due (after such deduction as aforesaid) from the said first day of May, in the said year one thousand seven hundred and eighty-six; any law, contract or usage to the contrary thereof in any wise notwithstanding. Provided always, That in case

default shall be made in the payment of either of the said yearly instalments, and not sooner, it shall be lawful for the creditor or creditors of the person or persons making such default, to prosecute for his, her or their debt or demand, in the same manner as if this act and the acts herein before mentioned, had never been passed; but there shall not be levied, by virtue of any execution, upon any judgment, sentence or decree thereupon obtained, any other or greater sum than the amount of the instalment or instalments, with the interest thereon, in respect to which default shall have been made; and no foreclosure of any mortgage shall operate as a bar to any equity of redemption, until after the said first day of May, in the said year one thousand seven hundred and ninety; but it shall be lawful in every such case, for the chancellor to direct a sale of so much of the said mortgaged premises as will be sufficient to satisfy the instalment or instalments which shall have become due, and the interest thereon. Provided also, That the said time given as aforesaid, for the payment of such debts or demands, in cases where the creditor or creditors has or have no mortgage or other security upon any lands, tenements or hereditaments, shall be, and the same hereby is upon the express condition, that the debtor or debtors, his, her or their heirs, executors or administrators, as the case may be, shall, within six months from the passing of this act, either give to the creditor or creditors, good real or personal security for the amount of the debt or demand, to the satisfaction of such creditor or creditors, or shall deposit with, or tender to such creditor or creditors, if within this state, and to be found, or if not within this state, in the hands of the treasurer of this state, for the benefit of such creditor or creditors, by way of collateral security for his, her or their debt or demand, the full amount of the principal and interest thereof, without such deduction as aforesaid, in the certificates issued or to be issued by the treasurer of this state; in default whereof, it shall be lawful for such creditor or creditors to prosecute for his, her or their debt or demand, in the same manner as if this act, or the acts hereby intended to be amended, had never been passed. Provided further, That if such creditor or creditors shall be willing to accept the payment of the whole of the principal and interest of his, her or their debt or demand, without such deduction as aforesaid, in any of the certificates or sureties aforesaid, and shall notify the same to his, her or their debtor or debtors; and if such debtor or debtors shall not make payment according to such notification, within six calendar months, thereafter; then, and in every such case, it shall be lawful for such creditor or creditors to proceed in the same manner as if this act, or the acts hereby intended to be amended, had never been passed. And provided further, That nothing herein contained shall be construed to extend to any persons, creditors or debtors, not comprehended in the acts aforesaid, except in cases of the assignment of any bond, bill, obligation, mortgage, security or demand whatsoever, made to any person or persons whomsoever, by any person who has remained with, gone into, or was sent within the enemy's lines, during the late war. And provided further, That the same shall be deemed to extend to the executors and administrators of all such persons being now deceased, to whom the same would extend if such persons were in full life, whether the said persons died before or since the passing of the said first mentioned act. Provided nevertheless, That the same shall not be deemed to extend to any subjects of the king of Britain, comprehended in the treaty of peace between the United States of America, and the said king.

III. *And be it further enacted by the authority aforesaid,* That all such parts of the said acts last mentioned, as are in any wise repugnant to the true intent and meaning of this act, be, and the same are hereby repealed.

C H A P. XCV.

‡ 7th sess. ch. 52.

An ACT to amend an Act, entitled, † An Act for the better laying out, regulating and keeping in Repair, all common and public Highways and private Roads, in the Counties of Ulster, Orange, Dutchess, Washington, Westchester, Albany and Montgomery.

Passed 20th April, 1787.

I. **B**E it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That the justices of the city and county of Albany, and counties of Montgomery and Columbia respectively, shall, at the next general sessions of the peace in and for the said counties respectively, which shall be held after the first

See 11th sess. ch. 64. sec. 7.

Tuesday of September next, or at any general sessions of the peace within six months thereafter, appoint for each town in such counties, instead of the commissioners directed to be elected by virtue of the said act hereby intended to be amended, of the freeholders actually residing in such towns, not more than five, nor less than three commissioners of the highways.

Extended to Ulster county, 14th sess. ch. 53, sec. 4.

II. *And be it further enacted by the authority aforesaid,* That it shall be, and it is hereby expressly made the duty of the commissioners of highways, in every town in the said counties, to cause all public roads in such respective counties, to be opened and extended, within six months after the passing of this act, to the breadth of two rods at the least; and that no compensation shall be made to any proprietor or proprietors of any land which such roads shall include, in consequence of such opening or extension.

When they may lay out highways through any garden or orchard.

III. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the commissioners of the highways, to lay out across or through any garden or orchard, any public road or highway, unless such orchard shall be of the growth of at least four years, or such garden shall have been cultivated as such, at least four years before such road or highway shall be laid out.

Roads to be four rods wide.

IV. *And be it further enacted by the authority aforesaid,* That all public roads or highways hereafter to be laid out by virtue of the act thereby amended, shall be four rods wide at the least.

Overseers of the highways in Albany, Montgomery & Washington may cause inhabitants to work more days than they are rated.

V. *And be it further enacted by the authority aforesaid,* That whenever any road district in the counties of Albany, Montgomery and Washington, shall require a greater number of days-work, to make or repair any of the roads in any of the said counties, than are or shall be rated on the inhabitants of such road district, by the commissioners, at their annual meeting, agreeable to the directions contained in the fifth section of the act hereby amended, that then, and in such case, it shall and may be lawful for the overseers of any such road district, to cause the several persons on his list named, to work a further number of days, in proportion to the number of

days such persons shall have been respectively rated as aforesaid ; any thing in any former law to the contrary notwithstanding.

VI. And whereas in and by the act hereby intended to be amended, no provision is made in cases where any dispute may arise about the roads between adjoining counties : For remedy whereof, *Be it enacted by the authority aforesaid,* That whenever any dispute shall arise about

Disputes concerning roads extending from one county into another, how to be settled. any road leading or extending, or intended to extend from one county into another county, it shall and may be lawful for the commissioners of the highways in the town aggrieved, to apply to any one justice of the peace of the county, who is hereby required to issue his precept, directed to the sheriff of such county, requiring and commanding him to summon twelve freeholders, not interested in the road so in dispute, to be and appear before him, at a time and place to be mentioned in such precept ; and the said justice shall give notice in writing under his hand, to some one justice of the peace in the adjoining county, with which the dispute subsists, who is also hereby required to issue his precept to the sheriff of such county, who shall also summon twelve sufficient freeholders as aforesaid ; and the said justices shall agree on a day certain, not more than twenty, nor less than five days from the date of such precept, when and where they shall meet ; and the said justices, freeholders, commissioners and sheriff, being so met, the said justices shall proceed to draw, by ballot, six of such freeholders out of each twelve so summoned from the two counties ; and when six men from each list shall be so drawn, and sworn by one of the justices, well, truly and impartially to determine the matter in dispute, respecting the most convenient place for such road to cross the line which divides such counties, they shall be one jury, notwithstanding they are summoned from different counties ; and such jury, together with the two justices, the commissioners and sheriff, shall proceed to view the road so in dispute, and when the said jury shall have carefully viewed the premises aforesaid, and heard the proofs and allegations of the contending parties, they shall go together in some convenient place, and after any nine or more of them shall agree on a verdict, they shall deliver the same in writing, under their respective hands and seals, to the said justices, who shall also subscribe the same ; which verdict shall be lodged in the office of the clerk of such county where the complaint was first made, there to be entered of record ; and the said justices shall make two other copies of the said verdict, and shall deliver one of them to the clerk of the one town, and the other to the clerk of the other town, through which the said road shall be so established in the different counties between which such dispute did subsist ; and the clerks of such towns shall respectively enter the same in the records of such towns ; after which it shall be the duty of the commissioners in the respective towns, to open such road agreeable to the verdict of the jury aforesaid,

This clause to extend to Albany, Montgomery and Washington only. and cause the same to be repaired as other public roads in any such county are repaired : Provided, That this clause shall only extend to the counties of Albany, Washington and Montgomery.

Penalty on justices, &c. for neglect of duty. VII. *And be it further enacted by the authority aforesaid,* That if any justice, commissioner, sheriff or other person, shall neglect or refuse to do, execute or perform any of the duties hereby enjoined on him or them by this act, such person or persons shall respectively forfeit the sum of two pounds, to be recovered by any overseer of the highways in the town where such default shall have been,

before any justice of the peace in either of said counties, with costs; and when recovered to be applied towards repairing the public roads in the town where such neglect or refusal shall have happened, in the manner directed in and by the act hereby amended.

C H A P. XCIX.

An ACT for the Payment of the Salaries of the Officers of Government, and other contingent Charges.

Passed 21st April, 1787.

[This act except the 11th section is obsolete.]

XI. **A**ND *be it further enacted by the authority aforesaid,* That it shall and may be lawful for the auditor of this state, and he is hereby required to do and perform every act, matter and thing, which the treasurer is directed to do and perform in and by the act, entitled, † An act for the collection and commutation of quit-rents, passed the first day of April, one thousand seven hundred and eighty-six; and in and by the act, entitled, ‡ An act to amend an act, entitled, An act for the collection and commutation of quit-rents, passed the eleventh day of April, one thousand seven hundred and eighty-seven.

C H A P. CII.

An ACT for the Relief of Persons who paid Money into the Treasury of this State, in Consequence of a Resolution of the Committee of Safety, of the first Day of March, One Thousand Seven Hundred and Seventy-seven, and for other Purposes therein mentioned.

Passed 21st April, 1787.

WHEREAS several persons have paid monies into the treasury of this state, in consequence of a resolution of the committee of safety, made the first day of March, one thousand seven hundred and seventy-seven: but as the said resolution hath not been adopted or confirmed by any convention, nor by the constitution, or the legislature of this state, many of the persons who so paid money into the treasury, have petitioned the legislature for relief: Therefore,

I. *Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same,* That it shall and may be lawful for the treasurer of this state for the time being, and he is hereby authorized and required to give to every person who hath paid money into the treasury, in consequence of the said resolution, or to the executors or administrators of such person, a certificate for the amount of the money so paid into the treasury, with the interest thereof, at the rate of five pounds per cent. per annum, from the time the same was so paid into the treasury, if the same was so paid before the first day of September, in the year of our Lord one thousand seven hundred and seventy-seven; but if the same was so paid after that day, then such certificate shall be given for the value thereof, after reducing the same according to the continental scale of depreciation, with interest for the same, at the rate aforesaid, from the time the same was so paid; which certificate shall be payable, with interest at the

rate of five per cent. per annum, and shall be received and taken in all payments, where any other certificates given by the treasurer of this state, are or shall be receivable by law. Provided always, That no such certificate shall be given to any person for any money so paid into the treasury; as due to any person or persons whose estate hath been forfeited to the people of this state; but where monies have been so paid upon, or in discharge of any bond or mortgage, to any person whose estate is forfeited to the people of the state of New-York, such payments shall be considered as good and effectual for the specie amount of the monies so paid, and no more; such amount to be settled agreeable to the scale of depreciation herein before mentioned; and such mortgages may be discharged in the manner directed by an act, § 6th sess. ch. 17.

entitled, ‡ An act to enable the clerks of the respective cities and counties within this state, to cancel the records of certain mortgages made and executed to persons whose estates are forfeited, on proof that such mortgages are satisfied. And the treasurer of this state, and the justices of the supreme court, shall make such enquiries, and give such certificates as may be necessary for that purpose.

II. *And be it further enacted by the authority aforesaid,* That the treasurer of this state shall be, and hereby is discharged and indemnified of, from and against all suits whatsoever, which have been or shall be brought against him, for or on account of any money so paid into the treasury as aforesaid; and this act shall or may be pleaded or given in evidence, in discharge of any such suit.

[It was conceived unnecessary to print any more of this act than the following clauses, the rest being either expired, repealed, obsolete, or private.]

XXIII. And whereas the courts of common pleas and general sessions of the peace, in and for the county of Washington, are now held in Salem, in the said county; and it hath been represented to this legislature, that it would be more convenient for the inhabitants of the said county, to hold the said courts once in every year in Argyle; Therefore, *Be it further enacted by the authority aforesaid,* That from and after the passing of this act, the courts of common pleas and general sessions of the peace, in and for the county of Washington, shall thenceforth be held at Salem aforesaid, on the last Tuesday in May, and on the first Tuesday in November, in every year; and at the house of Adiel Sherwood, Esquire, at Fort Edward, in the township of Argyle, on the second Tuesday of February, in every year; any thing in any other law contained to the contrary thereof, in any wise notwithstanding.

XXVII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for any public officer, who was employed during the late war, under the authority of the United States, and who now is, or hereafter shall be prosecuted for services performed at his request, or articles by him purchased or taken for the United States, or this state, to tender in court the same public securities of the United States, or of this state, as he has received, or shall receive on the settlement of his accounts, for such services performed, or articles purchased as aforesaid, in full discharge of such demand.

C H A P. CIII.

An ACT supplementary to an Act, entitled, An Act for running out and marking the Jurisdiction Line between this State and the Commonwealth of Pennsylvania, and for other Purposes therein mentioned.

Passed 21st April, 1787.

[The first clause of this act is obsolete.]

§ 9th sess. ch. 67. II. **A**ND whereas by an act, entitled, ‡ An act for the speedy sale of the unappropriated lands within this state, and for other purposes therein mentioned; the commissioners of the land-office are authorised, whenever they think proper, to direct the surveyor-general to proceed to the sale of lands, without making a previous actual survey thereof. And whereas difficulties may arise to the proprietors of such lands, by having them surveyed by different persons; For prevention *Out-lines of lands whereof, Be it further enacted by the authority aforesaid, sold by the state, to be run before the land is divided or settled.* That before the proprietors of any lands hereafter to be sold, without being previously surveyed, proceed to divide or settle the same, they shall make application to the surveyor-general, in writing, to run the out-lines thereof. And it is hereby made the duty of the said surveyor-general to cause the same to be done as soon as may be, after such application shall have been made. And further, That in every survey hereafter to be performed by the surveyor-general, by virtue of his office, he shall give notice to the proprietors when he will commence the same: And if such proprietors shall attend, or cause some person to attend at such time, with a flag-bearer, two markers, a sufficient quantity of provision for the purpose, and the means of transporting it, as occasion shall require, the said surveyor-general shall cause such survey to be made, and be allowed to charge such proprietors for the service of a surveyor, at the rate of twenty shillings per day, and for two chain-bearers, to be furnished by him, four shillings per day, each. And further, That the thirtieth section of the said act shall be, and hereby is repealed.

END OF VOLUME I.

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